



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ERP, RP, RR, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to make repairs/emergency repairs to the rental unit; for authorization to reduce the rent for repairs, services, facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of filing this application.

At the hearing on July 31, 2012 the female Tenant stated that the Application for Dispute Resolution, Notice of Hearing, and evidence was mailed to the Landlord, via registered mail, on July 20, 2012.

The Agent for the Landlord stated that the aforementioned documents were not received until July 26, 2012 and that the Landlord has had insufficient time to prepare a response to the claims. The Agent for the Landlord requested an adjournment for the purposes of submitting a response to the claims. The Tenant opposed the request for an adjournment on the basis that they have been living with a leaking roof since May of 2012 and they want the roof repaired.

In the interests of providing the Landlord with a reasonable opportunity to respond the Tenant's claim, I granted the application for an adjournment. In granting the request I was influenced, in part, by the fact that only 13 days have passed since the Tenant filed the Application for Dispute Resolution; the Landlord has only had 5 days to prepare a response; and a roof that is covered with a tarp is not likely to pose a significant problem in Penticton during the month of August.

Both parties were represented at both hearings. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. The Landlord did not submit evidence in regards to this matter, in spite of the adjournment that was granted.

Issue(s) to be Decided

The issues to be decided are whether there is a need for an Order requiring the Landlord to make repairs to the rental unit; whether the Tenant is entitled to reduce the

rent in compensation for living in the rental unit while the roof/ceiling was compromised; and whether the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2007 and that the Tenant is currently required to pay monthly rent of \$1,500.00.

The female Tenant stated that their roof leaked on March 12, 2012; that the water damaged the ceiling in their laundry room; that the problem was reported to the Landlord on March 12, 2012; and that repairs to the roof and ceiling were made between April 16, 2012 and April 24, 2012, although the ceiling repairs have never been completed.

The Agent for the Landlord stated that he hired someone to repair the roof and ceiling in April of 2012, although he is not certain of the exact dates, and he understood the problem with the roof had been rectified.

The female Tenant stated that the roof leaked again on April 26, 2012; that the problem was reported to the Landlord on April 26, 2012; that the Landlord had the roof assessed on May 10, 2012; that the roof leaked again on May 15, 2012; that the problem was again reported to the Landlord; and that the roof was covered with a tarp on May 15, 2012. The Agent for the Landlord agrees that the roof leaked again on two occasions and that he ensured it was covered with a tarp, although he is not certain when the roof leaked or when it was covered with a tarp.

The Landlord and the Tenant agree that the roof is still covered with a tarp and that it has not leaked since May 15, 2012. The Tenant submitted photographs of the current state of the ceiling, which needs painting and to have the light fixture secured to the ceiling.

The male Tenant stated that they want the Landlord to repair the area of the roof that is leaking, to repair the ceiling in the laundry room that has been damaged by water, and to ensure the light fixture in the ceiling is safe after being exposed to water.

The Agent for the Landlord stated that the Landlord intends to repair the ceiling in the laundry room; that the repairs have been delayed because he has had difficulty coordinating the repairs with the person who has been making repairs; that he has located another person to repair the ceiling; that the Landlord does not currently have the funds to repair the roof; and that the Landlord intends to put another tarp on the roof to ensure it does not leak.

The male Tenant argued that the tarp does not comply with municipal bylaws. He stated that the bylaws prohibit the use of tarps on roofs with the exception of new construction, which can be covered with a white tarp. The Agent for the Landlord stated

that tarps on roofs are permitted for up to six months. The Tenant submitted no evidence of a bylaw that prohibits or sets limits on covering a roof with a tarp. The male Tenant stated that the roof can be repaired with a minimum of expense by fixing cracks in the roofing membrane.

The Tenant is seeking reduced rent, in an undisclosed amount, as compensation for the disruption caused by the leaks and associated repairs. The male Tenant stated that they always access the rental unit through the laundry area.

Analysis

Section 32(1) of the *Residential Tenancy Act (Act)* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The undisputed evidence is that the roof on this rental unit has not leaked since May 15, 2012, after a portion of the roof was covered with a tarp. While it is commonly understood that housing standards require homes to be equipped with a roof that does not permit water to enter the building envelope, the Tenant submitted insufficient evidence to establish that health, safety and housing standards prohibit the use of tarps to accomplish this purpose. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that outlines provincial and/or municipal building regulations. I therefore cannot conclude that the Landlord is failing to comply with section 32(1) of the *Act* when he uses a tarp to repair the roof, providing the roof is covered in a manner that prevents water from entering the building. In the event that the roof leaks again in the future, the Tenant has the right to file another Application for Dispute Resolution seeking compensation for the loss of quiet enjoyment of the rental unit and an Order for more permanent repairs to the roof.

The undisputed evidence is that the ceiling in the laundry room of the rental unit has been damaged as a result of a water leak and has not yet been fully repaired and painted. Unlike the roof on the exterior of the building, I find that the damaged ceiling directly impacts the tenancy, as it reduces the aesthetic value of the rental unit. I therefore Order the Landlord to paint the area of the ceiling impacted by the leak and to properly attach the light fixture to the ceiling in the laundry room, by no later than September 15, 2012.

Every tenancy agreement contains an implied covenant of quiet enjoyment. Temporary discomfort or inconvenience does not generally constitute a basis for a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In these particular circumstances, I find that the leaking roof has not caused a significant inconvenience to the Tenant and that the aesthetic value of the rental unit has not been greatly reduced. I therefore dismiss the Tenant's application for authority to reduce the rent for the period between March 12, 2012 and September 15, 2012. In the event that the ceiling has not been repaired by September 15, 2012 I authorize the Tenant to reduce the rent by \$25.00 per month, effective October 01, 2012, and to thereafter reduce the rent by \$25.00 per month until the repairs to the ceiling have been completed.

Conclusion

I find that the Tenant's Application for Dispute Resolution has some merit and I therefore find that they are entitled to recover the fee paid for filing this Application. I therefore authorize the Tenant to reduce one rent payment by \$50.00 in full compensation for this fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 21, 2012.

Residential Tenancy Branch