



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC, ERP, RP, PSF, RR

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation for emergency repairs and damage or loss under the Act, regulations or tenancy agreement; authorization to reduce rent payable; and Orders for: compliance, repairs, emergency repairs, and services or facilities required by law. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I determined the landlord's photographs had been served upon the tenant; however, the landlord's written submissions had not. I accepted the photographic evidence but excluded the written submissions from further consideration. The landlord was provided the opportunity to make relevant oral submissions during the hearing.

In this decision, the singular reference to "the landlord" refers to the owner and/or the manager.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation related to repairs and clean up efforts that were the result of a roof leak?
2. Is the tenant authorized to reduce rent for outstanding repairs?
3. Is it necessary to issue Orders for compliance, repairs, and/or to provide services or facilities?

Background and Evidence

The tenancy commenced September 17, 2012 and the tenant is required to pay rent of \$650.00 on the 1st day of every month under the terms of his tenancy agreement.

Following a heavy snowfall, on December 19, 2012 a section of the roof began to leak through the ceiling of the rental unit. The roof had been installed approximately two

years prior. Upon notification by the tenant, the landlord and manager attended the property to investigate. The roofing installer was called to the property and a temporary fix has been made. The roof is not currently leaking.

It was undisputed that portions of the ceiling, including old ceiling tiles and a plywood ceiling installed a couple of years prior were taken down by the tenant. The tenant also disconnected and removed the smoke detector. The tenant collected and cleaned up the water that came through the ceiling. The landlord compensated the tenant \$150.00 when the leak occurred.

Currently, there are three holes in the ceiling of the rental unit. The hole over the stove has been covered with plastic and the hole in the bedroom has been covered with a drop cloth by the tenant.

The tenant is seeking repairs to the ceiling. The landlord submitted that repairs will be made to the ceiling once the roof is permanently fixed. I heard that the roofer needs to wait for an appropriate window in the weather to make the permanent repair. The landlord submitted that it is possible that such a permanent repair may be completed in the summer months given the rental unit is located in the rainy lower mainland.

The landlord raised an issue with respect to the tenant's confrontational and abusive conduct towards the landlord when the landlord attended the property to deal with the roof leak. The tenant acknowledged that he had exhibited angry behaviour toward the landlord as he was of the belief the landlord should have disclosed previous roof leaks to the tenant. The landlord acknowledged that the roof had leaked two years ago but that the landlord had the roof system upgraded, which is still under warranty. The leak arose due to the heavy snowfall and the roof failure was not anticipated.

The tenant is seeking a rent reduction of 30% until such time the ceiling is repaired. The landlord was of the position that a 10% reduction is more appropriate.

The tenant is also seeking compensation of \$200.00 for his time spent cleaning up the water and installing the plastic barrier on the ceiling. The tenant acknowledged that the tenant did not ask the landlord to install a barrier or gain the landlord's consent to install the plastic barrier.

The tenant requested that a mould test be conducted since there is a smell of mould coming from the attic, which is why he put up a drop cloth on the bedroom ceiling. The landlord denied there is an odour in the rental unit or that there is any mould that resulted from the brief period of water infiltration. The landlord acknowledged that an

insurance claim was not initiated and a restoration company has not been involved in the repair process.

Analysis

Based upon submissions and evidence presented to me I provide the following reasons and findings.

Orders for Emergency Repairs

The Act specifically defines emergency repairs to include major leaks in a roof that require urgent repair. I am satisfied the landlord took action to deal with the roof leak in a reasonable and timely manner. As the roof has stopped leaking due to a temporarily repair I find make no order for emergency repairs.

Orders for compliance, repairs, and services or facilities

I accept that the effectiveness of the temporary repair needs to be monitored and assessed and that it is reasonable to wait to repair the ceiling until the roof is permanently fixed. I order the landlord to repair the ceilings, in a manner that complies with building laws, once it is determined that the roof is sufficiently or permanently repaired. I have not set a specific deadline for this order to be completed as I accept that the roof repair is dependent on weather conditions; however, it is expected that the roof and ceiling will be repaired as soon as possible. Should the repairs take longer than a reasonable period of time the tenant is at liberty to file another Application for Dispute Resolution seeking further remedy.

Although I was provided disputed testimony as to the presence of a mould smell, having heard that an insurance company or restoration company have not been called to deal with the effects of the water infiltration, I find there is a reasonable likelihood that mould may be present, even if it is not apparent in the landlord's photographs. To be clear, I have not found that there is mould; however, I find it reasonable that the presence of mould be determined given the tenant's testimony that he can smell something resembling mould. Therefore, I order the landlord to have an air quality test performed to test for the presence of mould. I further order that the landlord share the air quality test report with the tenant. These requirements must be completed within two weeks of receiving this decision. If mould levels exceed health and safety standards the landlord must take appropriate action to remedy the mould.

In recognition that the landlord will need to gain access to the rental unit in order to assess and make necessary repairs, and perform an air quality test, the parties are informed of their respective rights and obligations. The landlord remains obligated to

gain entry in a manner that complies with section 29 of the Act which includes gaining the tenant's verbal consent or giving the tenant a written 24 hour notice of entry.

Having heard the tenant has previously demonstrated confrontational and abusive behaviour toward the landlord I find it necessary and appropriate to order the tenant to not interfere with the landlord's efforts to perform the air quality test, and assess and repair the roof and ceiling. Denying access to the rental unit despite receiving proper notice or acting aggressively or abusively toward the landlord is likely to be seen as interference and may be grounds for ending a tenancy.

I further order the tenant to reattached or reinstall the smoke detector immediately.

Monetary compensation and rent reduction

Compensation payable to a tenant for emergency repairs must meet several criteria as specified in section 33 of the Act. Among other things, it must be shown that the tenant spent money to have an urgent, emergency repair performed because the landlord would not respond to the tenant's requests to make the emergency repair. While a repair to stop a major leak in a roof is an emergency repair, the tenant's efforts to collect and clean up the water, as well as putting plastic on the ceiling do not constitute emergency repairs under the Act. As the tenant did not spend money to have the roof repaired I find the tenant not entitled to compensation for an emergency repair.

A tenant may be entitled to compensation where the use and enjoyment of the rental unit is compromised. I find the damaged ceiling diminishes the tenant's enjoyment of the rental unit and considering the ceiling is not going to be repaired in the near future I find the diminishment to be more than temporary in nature. Therefore, I find it reasonable to grant the tenant compensation and rent reduction for the diminished value.

I find the tenant's request for a 30% rent reduction to be excessive. I find a reasonable and appropriate award equivalent to 20% of the monthly rent. Starting February 1, 2013, the tenant is authorized to deduct \$130.00 from his monthly rent until such time his ceilings are repaired.

For the period of December 19, 2012 through to January 31, 2013 I find the tenant entitled to compensation of \$180.00 [$\$650.00 \times 20\% \times 43/31$ days]. Considering the landlord has already compensated the tenant \$150.00 I find the tenant entitled to an award of \$30.00.

I further award the tenant one-half of the filing fee he paid for this Application, or \$25.00, as I am satisfied his actions have contributed to this dispute. Therefore, in addition to the monthly rent abatement of \$130.00, the tenant is authorized to make a one-time deduction of \$55.00 [\$30.00 as above + \$25.00 for the filing fee] from rent payable.

Conclusion

In this decision I have given both parties orders with respect to completion of air quality testing, access to the rental unit, and repairs. I have authorized a monthly rent reduction of \$130.00 per month starting February 1, 2013 until such time the tenant's ceiling is repaired. I have also authorized the tenant to make a one-time deduction from rent in the amount of \$55.00.

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: January 25, 2013

Residential Tenancy Branch

