



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CALLAHAN PROPERTY GROUP LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenants be granted a Monetary Order?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: their written submission; printed photographs; an e-mail; the tenancy agreement; and a CD containing videos of the water damage and leak.

The Landlord submitted documentary evidence which included, among other things, copies of: their written submission; receipts for roof repair and replacement; and e-mails.

The following facts were reviewed during this proceeding and were not in dispute:

- The parties entered into a month to month tenancy that began on November 1, 2011 for the monthly rent of \$880.00;
- The Tenants paid \$440.00 on May 3, 2009 as the security deposit;
- The Tenants provided proper notice to end the tenancy and vacated the unit on or before March 25, 2013;
- The move out inspection took place on March 25, 2013, during which the Tenants provided the Landlord with their forwarding address;
- The security deposit has been disbursed in an agreed upon manner;
- In October 2012 the building roof began leaking causing water to infiltrate through the ceiling and into the Tenant's rental unit
- The Landlord hired a roofing company to attempt to patch and repair the roof as required and then decided to have the entire roof replaced
- The roof replacement was complete by the end of February 2013
- The parties attempted to mutual agree to settle the amount of compensation required and when that failed the Tenant's filed for dispute resolution.

The Tenant testified that while they understand the reasons that the Landlord would attempt to repair the roof before initiating a full roof replacement; they feel they are entitled to compensation in the amount of \$842.00 for the disruptions caused to their life. In determining the amount of their claim the Tenant stated that they calculated about 18% of their monthly rent for the five months they had to endure the leaks and living around the buckets. He argued that from October 2012 until they moved out there were continual issues of water dripping. He noted that whenever there was precipitation, (rain or snow), a new drip or leak would develop.

The Tenant stated that they had to leave the buckets out on the floor in a high traffic area which was an inconvenience to have to always step around. There was a constant disruption in that they had to listen to the water dripping and had to empty the buckets on a regular basis. They also felt embarrassed to entertain or have any guests over which affected their ability to enjoy their home.

The Landlord testified that they had originally offered the Tenants a \$100.00 grocery certificate and later offered them \$300.00 rent reduction but that the Tenants refused their offer of compensation. They feel they paid good attention to the problem as they responded immediately and spent a large amount of money in attempts to first repair and then replace the entire roof.

The Landlord stated that they had built a good relationship with the Tenants and the roofing contractors. They even had the Tenants speak directly to the contractors to

ensure their concerns were heard. When they decided to replace the entire roof they had anticipated further inconveniences to the Tenants so offered to pay the moving expenses to relocate the Tenants to a different unit but they refused this offer as well.

In deciding the amount of compensation to offer to the Tenants the Landlord stated that they considered things such as if any of their personal effects were damaged or affected by the water leaks and the area of the apartment that was being affected. They noted that while the condition of the ceiling and presence of buckets may have been unsightly to look at it did not directly affect their ability to reside in the apartment.

The Tenant clarified that they were not offered the \$100.00 gift card and the \$300.00 rent reduction at the same time. They originally accepted the \$100.00 gift card and when they realized that they may not get additional compensation they returned the gift card. It was later when they were offered \$300.00 rent reduction but felt that if the repairs were dragged out longer they would not receive additional compensation. Although they were offered to relocate to a different unit they were never told the Landlord would pay the related expenses. At the time they made their application for dispute resolution they were looking at options to purchase their own home. They succeeded in purchasing a home and provided the Landlord with notice to end their tenancy on February 25, 2013.

In closing the Landlord submitted that they succeeded in stopping all leaks with patches, when they occurred, and then proceeded to replace the entire roof. They are of the opinion their offer of compensation was more than adequate and they responded appropriately to the repair issues as supported by the invoices provided in their evidence.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the 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.

Neither party disputed the requirement or the completion of the roof repairs. Therefore I make no findings relating to the repairs. I accept that during the period of patch work and repairs there may be times that services or facilities would have been restricted,

such as use of the hallway with buckets, but that those restrictions would have been temporary in nature and not intended by the Landlord to be a permanent withdrawal of the full use of the rental unit space.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "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."

I find it undeniable that the Tenants have suffered a loss of quiet enjoyment, for a period between October 2012 and March 2013 and therefore suffered a subsequent loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that I accept the leak continued whenever there was precipitation; however, if the Tenants worked outside of the home the amount of time they would have been affected would have been limited to the time they were inside the rental unit. Notwithstanding the Tenant's submission of the amount of stress caused by the leaking roof, and considering the actions taken by the Landlord, I find the amount being claimed of 18% of their total rent to be excessive. Therefore, I hereby award the Tenants the

amount of **\$220.00** which is comprised of 5% of the \$880.00 rent paid for the five month period, pursuant to section 67 of the Act.

The Tenants has been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$245.00** (\$220.00 + \$25.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: May 08, 2013

Residential Tenancy Branch

