



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND and FF

Introduction

By application of March 22, 2013, the landlord sought a Monetary Order for damage to the rental unit and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to the monetary award for the claims submitted and in what amounts.

Background Evidence and Analysis

This tenancy began on September 1, 1997. Rent was \$1,017.19 per month and the landlord held a security deposit of \$375 paid on September 1, 1997.

The tenancy ended on May 31, 2013 by a Mutual Agreement to End Tenancy signed by the parties on March 19, 2013 and the security deposit with interest has been returned to the tenant.

During the hearing, the landlord gave evidence that the claim in damages arose from an incident on December 7, 2012 in which the tenant had left a tap running in the bathroom of the rental unit which overflowed causing water damage to the rental unit, common hallways and two other rental units directly below.

The parties concurred that the bathroom tap was left running and overflowed on December 7, 2012. They further concurred that this was the second such incident, the first having occurred on September 28, 2012 which resulted in \$820 in damage to the rental unit which was paid by the tenant.

In the present matter, the landlord has submitted receipts for the costs of removing water from the floors of the affected rental units and hallways, the cost of repairs to the rental units below and the cost of hotel accommodation and meals for the residents in the unit two floors below for the three days during which their rental unit was uninhabitable.

The landlord's claims are made pursuant to section 32(3) of the *Act* which provides that

“A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

The landlord claims and, taking into account challenges submitted by the tenant's advocate and daughter who holds power of attorney, I find as follows:

Carpet cleaning - \$716.80. This claim, supported by a receipt from a professional carpet cleaning company, is itemized as the cost of water removal from the subject unit, the unit directly below and hallways adjacent to both. The tenant's representatives stated that they found the amount to be excessive as the operators had been in the rental unit for only one-half hour. They also noted that the unit charge had increased from the billing for the previous flood from \$140 for some areas to \$160.

The landlord stated that her company has a standing contract with the carpet cleaning company at a standard rate. Taking into account that, as a high volume customer, the landlord would have established a favourable rate and that the work in question was an emergency call out, I find on the balance of probabilities that the charge is reasonable. As the work was necessitated by the tenant having caused the flooding, the claim is allowed in full.

Ceiling remediation in unit two floors down - \$2,729.69. The landlord submitted an invoice from a specialist company to repair the ceiling in the bathroom of the rental unit two floors below the subject unit. The tenant's representatives contested the amount claim on the grounds that they had, on a description of the work required, been advised by a local building supplier that remediation would cost in the order of \$600. However, the supplier declined to provide the estimate in writing without viewing the damaged area. The landlord stated that they have a standing agreement with the company that did the work and that the company has the expertise to deal with strict requirements of dealing with the asbestos insulation in the building.

The tenants also noted an anomaly on the invoice which stated that the work had commenced on December 18, 2012 while another claim for hotel accommodation for the tenants of that unit was for the three days preceding. I accept the evidence of the landlord that the difference was a result of an error which confused the start date and the sign off date on the job.

Again, as the service provider does a large volume of work for the landlord, I find on the balance of probabilities that the work would have been done at a fair rate taking into account the expertise and extra precautions required to deal with asbestos.

The tenant's representatives argued that they had been denied an opportunity to view the damage now claimed. The landlord's representatives stated that she had been asked to leave the work area as the ceiling was bulging and the wet floor created an electrical shock hazard. She stated that nothing prevented the tenant from examining the hallway area or seeking comment from the residents of the unit in question in the interim. I find on the balance of probabilities that the landlord's contractor took the necessary and appropriate action to remediate the ceiling damaged by the tenant's action in leaving the tap running. The claim is allowed in full.

Hotel expenses for occupants of unit two floors below - \$257.01. The landlord stated that during the three nights from December 14 to 16, 2012, the rental unit was uninhabitable because the bathroom ceiling was open and the presence of asbestos created a potential hazard. Therefore, the landlord was forced to provide hotel accommodation for those tenants and has submitted a receipt in support of the claim. I find that this loss to the landlord was a direct consequence of the flooding caused by the respondent tenant and the claim is allowed in full.

The landlord stated that the tenants in the unit directly below the subject tenant's unit graciously offered to stay with family members while their unit was under repair and makes no claim for their accommodation.

Meal allowance for tenants two floors below - \$96.80. The landlord submitted a copy of a letter to these tenants confirming their hotel arrangements and, as they would be without cooking facilities, offered a per diem of \$40 per day for meals. The landlord claims \$96.80 in actual cost, granted to those tenants by permitting them to deduct the amount from rent. This claim is allowed.

Filing fee - \$50. As the landlord's application has substantially succeeded on its merits, I find that the company is entitled to recover the filing fee for this proceeding from the tenant.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Carpet cleaning	\$ 716.80
Ceiling remediation in unit two floors down	2,729.69
Hotel expenses for occupants of unit two floors below	257.01
Meal allowance for tenants two floors below	96.80
Filing fee	<u>50.00</u>
TOTAL	\$3,850.30

Conclusion

While I appreciate the tenant's concern that the landlord may not have been as cost conscious as she might have wished, I find that the landlord was forced to act expeditiously in the interest of three tenancies as a result of the tenant's error. Under the circumstances, I find it completely reasonable that the landlord would turn to proven, competent and reliable service providers to ensure fast remediation.

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$3,850.30 for service on the tenant.

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: June 18, 2013

Residential Tenancy Branch