



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) A monetary order as compensation for delayed and messy repairs plus money spent to alleviate the situation; and
- c) To recover the filing fee for this application.

Service:

The landlord agreed they received the Application for Dispute Resolution by registered mail. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to compensation for loss of use of part of his unit and/or for protecting his belongings and cleaning up after repairs were done? Is the tenant entitled to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced about two years ago and rent is \$685 per month. Although in his application, the tenant had requested to cancel a Notice to End Tenancy for cause, the evidence was that the Notice to End Tenancy had been for unpaid rent and he had paid rent within the 10 days so the Notice was void. Both parties agreed this was no longer an issue.

The tenant lives on the main floor of an apartment building. It was undisputed that there had been a flood on an upper floor and the tenant had damage to his ceiling. The tenant said he had fixed some holes that had been cut in it and the landlord had agreed to paint the ceiling. Initially, the landlord told him the workman would come a certain day, he did not and then she said it would be Thursday or Friday. On Friday, he said he

came home to find a big mess with the place dusty and drywall ripped off. He lived with this all weekend, then called and asked the workman not to come back for he wanted to build a dust barrier to protect his belongings. He paid \$53.81 for poly for a dust barrier and \$4.06 for a fuse. Then as he requested, he was given written notice of entry for repair for Friday again; the place was left in a mess for another weekend and finally the job was finished on the Monday. He said he had to do all the cleaning; although the workman removed his debris, he left a lot of dust and the smoke alarm off. He requests \$400.37 for half a month's rent and the cost of the poly and his labour. He provided invoices for the poly and a fuse totalling \$57.87 and a hand written note from the workman saying he would return on Monday, his sprayer was blowing fuses, asking him to replace a fuse and complimenting him on his poly job.

The landlord said they responded to the tenant's complaints about the ceiling and the tenant consented to a work person going in to repair on Oct. 18, 2013; he knew it would take 3 days. There was a 5x5 part of the drywall that needed replacing before spraying. After the first day, the tenant was uncooperative, said he required written notice, called the Police and would not let the repair person in. He did not inform the company until 4:42a.m. by text message that he could not enter to continue the repair and the company already had a workman on the way. Then the police called the company as well. Written Notice was given to the tenant and the job was finished on October 26, 2013. The landlord provided a letter from the repair company detailing the events as stated. They said they had had conversations with the tenant and he had agreed that they would poly the area and continue the job but changed his mind and texted his refusal at 4:42 a.m. on the Monday morning. This caused scheduling problems. They said they left his unit each day in the same condition that they found it. The landlord gave sworn evidence that she had checked each day as well and the unit was left clean by the workpeople; if it had not been, she would have cleaned it herself. The landlord submits that any delay in the repair was caused by the tenant himself, the workpeople were prepared to poly the area but he would not let them return on the Monday.

Included with the evidence is a letter from the repair company and a handwritten note from the repair person.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the party making the application to prove on a balance of probabilities their claim. When one party provides evidence of the facts in one way and the other party provides an equally probable

explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find the undisputed evidence is that there was damage to the tenant's ceiling and he did consent initially to a workman entering to repair the damage. I find he also agreed with the landlord's evidence that he refused entry into his unit subsequently (causing some problems to the scheduling of the workman) until he received written notice. He said this was so he could poly the unit to protect it against dust. I find he did poly the unit and replace a fuse at a cost of \$57.87 as proved by invoice and the handwritten note of the workman. Although the workman may have offered to poly the unit, he was not put to this expense; he had also asked the tenant to replace the fuse so I find the tenant entitled to recover his costs of the poly and the fuse.

The onus is on the tenant to prove on a balance of probabilities that the landlord through act or neglect caused him loss of his peaceful enjoyment and/or partial loss of his unit. I find it is the landlord's duty to maintain the premises pursuant to section 33 of the Act. I find the landlord's evidence credible that they acted expeditiously in effecting the repair of the ceiling as it is supported by the written statement of the company. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the cleaning of the unit and the loss of his peaceful enjoyment. The landlord's evidence is supported by the written statement of the company that the unit was left clean after each day of work and the sworn evidence of the landlord that she checked each day and it was left clean. While the tenant asserted it was left dirty and dusty, he provided no objective evidence to support his statements.

In respect to the claim for the loss of his reasonable enjoyment and partial loss of his unit during repair, I find the weight of the evidence is that this was largely caused by the tenant's own actions. The weight of the evidence is that the company had verbal consent of the tenant to enter the unit, that he knew it would take a few days, they entered on Friday and were prepared to finish the job by Tuesday but the tenant denied them entry and called the police. I find the tenant has not satisfied the onus of proving on a balance of probabilities that the landlord through act or neglect caused him a loss of peaceful enjoyment or a loss of some use of his unit so I find he is not entitled to compensation for this.

Conclusion:

For the above reasons, I find the tenant entitled to \$57.87 as compensation for the materials he bought. I dismiss the claim of the tenant for further compensation without

leave to reapply. As the tenant had limited success on his application, I find him entitled to recover half of his filing fee or \$25.

I HEREBY ORDER that the tenant may reduce his rent for January 2014 by \$82.87 to recover the compensation as ordered.

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: December 17, 2013

Residential Tenancy Branch

