



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, ERP, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to have the landlord make emergency repairs for health and safety reasons, an order to have the landlord make repairs to the unit, site or property and other miscellaneous claims. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about November 2009. Rent in the amount of \$525.00 is payable in advance on the first day of each month.

The tenant gave the following testimony:

The tenant stated that the landlord had made an offer prior to the hearing to meet most of the tenants' claims in her application. The tenant stated that the two items that the tenant is still seeking is that the landlord acknowledge in writing that the tenant and her family have lived in an unhealthy, hazardous, unlivable conation for 49 months and counting, and that the tenant seeks free rent for the next 15 months and a \$125.00

deduction from the sixteenth month. The tenant stated that there is a leak in the living room and bedroom that has been ongoing since she moved in. The tenant stated that the landlord has not met his duties in repairing the leak in a reasonable time frame. The tenant feels that is “only logical” that she be entitled to the compensation.

The landlord gave the following testimony:

The landlord stated that he was in agreement with many of the tenants’ claims. The landlord stated that he has been working with a contractor to remedy the situation as quickly as possible. The landlord stated that the tenant is exaggerating the extent, timeline and size of the leak and the and that she has incurred a minimal loss of use in her unit. The landlord stated that he acknowledges the leaks began in December 2009 however it has not been ongoing and that it was addressed each time in quick and reasonable manner.

Analysis

At the outset of the hearing the landlord advised that he was agreeable to much of the tenants’ application. The majority of the hearing was spent discussing a possible resolution however the parties were unable to work out all the issues. The parties agreed that the landlord would continue to work on definitively resolving the water leak and returning the affected area to a clean, safe and livable manner within two months. The landlord also agreed to the tenants’ monetary request of \$2146.84. That amount reflects the cost to replace some items that were damaged from the leak. The landlord stated he was quite “happy to cut her a cheque for that amount”.

I will address the tenants remaining claims and my findings as follows.

First Claim – The tenant is seeking written acknowledgement from the landlord that she was living in a hazardous and unhealthy unit. The landlord disputed this claim. The tenant did not provide sufficient evidence of this and I therefore dismiss this portion of her application.

Second Claim – The tenant is seeking free rent for 15 months and a \$125.00 deduction for the 16th month as compensation for having to live with an ongoing leak issue.

The tenant submitted documentary and photo evidence for consideration. The landlord stated the photos are of the most recent leak that he is presently dealing with and not a reflection of the ongoing state of the unit. The landlord stated that he feels that the tenant has been fairly compensated and that he has done everything he can do to correct this problem.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
 2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
 3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
 4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.
- . The tenant has not met each of the grounds as listed above, specifically #2.

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant. The landlord was very forthright in giving his testimony and stated that this was as big a concern for the owners as it was to the tenants. I find that the landlord is conducting his business in a reasonable manner and is not in breach of section 32.

I dismiss this portion of the tenants' application.

As per the parties' agreement I order that the landlord conduct any necessary repairs to resolve the water leak, those repairs must be completed by March 31, 2014. The tenant has leave to file an application if those repairs are not completed by that date.

The tenant is entitled to a monetary order for \$2146.84 as per the parties' agreement.

The tenant is entitled to the recovery of her filing fee of \$50.00 I grant the tenant an order under section 67 for the balance due of \$2196.84. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I

Conclusion

The tenant is entitled to a monetary order for \$2196.84. The landlord must repair the water leak in the living room and bedroom by March 31, 2014.

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 27, 2014

Residential Tenancy Branch

