



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant and two agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. However the tenant did not provide this same documentary evidence to the landlord. The landlord's evidence was sent to the tenant by registered mail which the tenant agrees he did not accept as it did not have the tenants name or a return address on the mail. The tenant's documentary evidence has not been considered the tenants digital evidence was not provided in a format that could be read by the Arbitrator and has not been considered. The landlord's evidence has been considered as the tenant cannot avoid service by not accepting registered mail that comes to the tenants address.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a rent reduction for repairs not completed?

Background and Evidence

The parties agree that this tenancy originally started in January, 2009. A new tenancy agreement was entered into on January 01, 2012 for a month to month tenancy. Rent for this unit is now \$850.00 per month and is due on the 1st day of each month.

The tenant testifies that in August, 2012 the tenant experienced a leak in his bedroom ceiling. The landlord was notified and the landlord's handyman came and cut a two foot hole in the bedroom ceiling. The tenant testifies that this was not repaired for a month and the tenant experienced high temperatures in the bedroom as the ceiling is located directly under the roof.

The tenant testifies that in 2013, the tenant's hallway and closet ceiling started to leak. The tenant informed the landlord of this in August, 2013. The tenant testifies that there was a problem with the roof as two other tenants were also experiencing leaking problems. The tenant testifies that the moisture from the leaks caused damage to the ceiling and the walls; has created black mould in the closet; there was a strong odour in the unit; and the carpets were wet. The tenant testifies that a health inspector came out to the unit next door and closed that unit down. The tenant was advised to move out by the health inspector but as the tenant could not afford to do so the health Inspector advised the tenant to ask the landlord to either move the tenant to another unit or put the tenant up in a hotel until the leaking roof was repaired.

The tenant testifies that the roof was not replaced until February, 2014. Since that time the landlord has replaced some drywall and had the tenants carpets cleaned. The tenant testifies that he has raised some concerns about electrical issues in his unit to the landlord and the landlord BS admitted to the tenant that there was a problem with the electrical shorting out. The landlord's handyman was in the tenant's unit and he took a quick look at the electrics but did not make any repairs.

The tenant testifies that when the carpets were cleaned the landlord did not lift them to ensure that there was no mould underneath the carpets. The tenant testifies that although the carpets appear to be dry and clean there could still be a health risk if there is black mould under the carpets.

The tenant testifies that the landlord BS came to talk to the tenant and when the tenant suggested being compensated for the leaks the landlord BS just laughed at the tenant. The tenant seeks compensation of \$2,500.00 or a rent reduction of \$200.00 per month for 20 months when the first water leak appeared. The tenant also seeks to recover the \$50.00 filing fee from the landlord.

The landlord BS disputes the tenant's claims. The landlord testifies that 90 percent of the tenant's testimony is untrue. The landlord testifies that the leak that occurred on the tenant's bedroom ceiling in 2012 was repaired within two weeks. When the tenant experienced further leaking in the hallways and closet, this was not reported to the landlord until October, 2013. The landlord testifies that due to leaking in other units the roofing contractors had already been out to the building and provided a quote and job description in September, 2013. Steps had therefore already been taken to replace the entire roof on the tenants side of the building.

The landlord testifies that due to inclement weather the roof replacement was not completed until February, 2014. Once that work was done and it was confirmed that no more leaks were evident the landlord made the repairs to the hallway and closet and had the carpets cleaned in the tenants unit.

The landlord testifies that they tried to speak to the tenant about a fair compensation but the tenant would not cooperate. The landlord testifies that throughout the repairs the tenant was notified by letter concerning the process. Copies of these letters have been provided in the landlord's documentary evidence. The landlord agrees that there was some leaking in other units and a temporary repair was done on the roof in those places. However, after that the landlord realized that the whole roof required replacement. The landlord disputes that another unit was closed down by the health inspector. The landlord testifies that the two tenants living in the other affected units moved out and the landlord shut down one unit until repairs could be made.

The landlord testifies that they acknowledge that the tenant was living in some discomfort as the roof did take longer to repair due to the weather conditions which prevented work commencing. The landlord testifies that the figures they had in mind for compensation for the tenant were \$113.00 per month for three months based on the rent and the square footage of the unit.

The landlord testifies that when their handyman was in the tenant's unit doing repairs the tenant mentioned there was an issue with the electrics. The landlord testifies that the tenant has not put anything in writing to the landlord that he has electrical issues but if the tenant does so the landlord will schedule their handyman to look at these issues or send in an electrician.

The tenant disputes the landlord's claims. The tenant testifies that the landlord was aware of the water leaks in August, 2013. The tenant testifies that he had notified the landlord in August 2013 and BS came out the first week of September, 2013 to look at the leaks in the tenant's unit.

The tenant testifies that he has notified the building manager a dozen times about the electrical issues and has placed sticky notes on the building manager's door. The tenant testifies that now the electrical problems are his chief concern, the ceiling in the closet also has a crack in it that needs to be addressed and the tenant would like the carpets

lifted to determine if there is any black mould underneath them and replaced if there is evidence of mould.

Analysis

I have carefully considered all the landlords documentary evidence before me, and the sworn testimony of both parties. With regard to the tenants claim for compensation; I refer the parties to s. 32(1) of the *Act* which states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The parties agree that there was a leak in the tenant's bedroom ceiling in 2009. The parties disagree about how long it took the landlord to make this repair. The tenant states it took a month the landlord states it took two weeks. When one persons testimony contradicts that of the other then the burden of proof lies with the person making the claim. In this matter the burden of proof lies with the tenant to show that the landlord did not repair the tenants ceiling in a timely manner in order to expedite repairs and reduce the tenant's discomfort of having a two foot wide hole in the bedroom ceiling. The tenant has provided insufficient corroborating evidence to meet the burden of proof and it is therefore one person's word against that of the other. Therefore i have insufficient evidence to show that the landlord did not act in a timely manner when making this repair and I find the tenant is not entitled to compensation in this matter.

With regard to the tenants claim concerning the roof leaks in 2013; the tenant has testified that he notified the landlord in August, 2013 of a water leak in the hall and

closet. The tenant has also testified that the landlord BS came to the tenant's unit the first week of September and saw these leaks. The landlord BS testifies that he was not made aware until October, 2013 of these issues. By then the landlord had already engaged a roofing company to replace the roof. I find in this matter that again concerning the date the landlord was notified of the leaks is in conflict. The tenant has insufficient corroborating evidence to meet the burden of proof that the landlord was aware of the leaks in the tenants unit in August, 2013.

However, I find as the landlord must have been aware of a problem with the roof at least in September, 2013 as the landlord had obtained a quote from a roofing company which is dated September 05, 2013. The landlords could have carried out some investigations of their own to determine which other units were affected by the leaking roof at that time to assist the tenants. Consequently, I am satisfied that the tenant was experiencing further roofing leaks during August and I find the tenant is entitled to some compensation for the discomfort of having leaks in the main hallway and closet.

The tenant seeks an amount of \$2,500 or a rent reduction of \$200.00 for 20 months to a total amount of \$4,000.00. The landlord has testified that a more appropriate amount would be \$113.00 a month for three months. It is my decision, however, that due to the extent of the damage to the hall and closet, the odors caused by the excessive moisture, the wet carpet and mould on the drywall, that the tenant is entitled to an amount of compensation. I have limited the tenants claim as the landlords were proactive in keeping the tenant notified of the actions being undertaken and due to the inclement weather conditions which were out of the landlord's control which caused the roof replacement to take longer than originally thought. I therefore award the tenant compensation of \$150.00 per month from September, 2013 to February, 2014 to a total amount of **\$900.00** pursuant to s. 67 of the *Act*.

No further rent reduction will be awarded as the roof has now been repaired.

I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

With regard to the tenants concerns over the remaining issues in the tenant's unit; a tenant is required to notify the landlord of any repairs required in writing. The tenant has testified that he has put sticky notes on the building manager's door, the landlord disputes this. As I have insufficient evidence to show that the tenant has notified the landlord of issues with the electrical system, the crack in the ceiling and the potential mould under the carpets, I am not prepared to make an Order at this time. However, I caution the landlord that they have been made aware of the tenants concerns about his electrical system at this hearing today and I Order the landlord to ensure an inspection of the tenants electrical system is carried out within one week of receiving this decision. If any repairs are required they should be completed by a certified electrician. If the landlord fails to make any required repairs the tenant is at liberty to either undertake the repairs in accordance with s. 33 of the *Act* regarding emergency repairs or file an application for dispute resolution for an Order for the landlord to make emergency repairs.

Furthermore, I caution the landlord to ensure the underneath of the tenant's carpets in the hall and closet are inspected for any mould due to the water leak. If mould is found in this area or on the subfloor it should be treated immediately and the carpets replaced if necessary. The crack in the closet ceiling must also be inspected and repaired if required.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. I ORDER the tenant to reduce his rent by **\$475.00** over the next two month's rent payments due to the landlord. The tenant's next two rent payments will therefore be **\$375.00**.

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: March 24, 2014

Residential Tenancy Branch

