



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Confide Ent. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, ERP, FF, O

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make emergency repairs; for “other”; and to recover the fee for filing this Application for Dispute Resolution. The Tenant withdrew the application for an Order requiring the Landlord to make emergency repairs to the rental unit, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The female Tenant stated that on February 24, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents/digital evidence the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on April 01, 2014, copies of which were mailed to the Tenant on April 04, 2014. The female Tenant stated that the Landlord’s evidence was received on April 07, 2014. The Tenant declined the opportunity to request an adjournment for the purposes of taking more time to consider the Landlord’s evidence. The female Tenant stated that she did not need additional time to consider the evidence and it was therefore accepted as evidence for these proceedings.

The Landlord submitted a cd to the Residential Tenancy Branch on April 01, 2014, a copy of which was not served to the Tenant. As this item was not served to the Tenant, it was not accepted as evidence for these proceedings.

Preliminary Matter

The Building Manager stated that her name is misspelled on the Application for Dispute Resolution. The Tenant declined the opportunity to amend the Application for Dispute Resolution to change the spelling of the Building Manager's surname.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for water damage in the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on October 01, 2006; that the keys to the rental unit were returned on March 29, 2014; and that the Tenant was paying monthly rent of \$839.00 at the end of the tenancy.

The Tenant is seeking \$5,000.00 in compensation for living in a rental unit that had been damaged by water.

The Landlord and the Tenant agree that on January 27, 2014 the Tenant informed the Landlord that water was seeping into the rental unit through the bathroom ceiling.

The Agent for the Landlord stated that a plumber inspected the ceiling on January 28, 2014; the plumber speculated that that moisture was due condensation from a toilet in a suite above this rental unit; and that he recommended the floor in the upper suite be changed. She stated that at the time of this inspection the ceiling was "soft", but water was not dripping into the unit.

The Agent for the Landlord stated that the Landlord contacted their contractor to make arrangements to have the flooring in the upper suite repaired; that there was a delay in initiating that repair as the contractor was away; and that the contractor subsequently concluded that condensation was not the problem.

The female Tenant stated that the ceiling was inspected by an agent for the Landlord on January 30, 2014, but the leak was not repaired. She stated that the problem was reported again on February 02, 2014 and again on February 06, 2014.

The Agent for the Landlord stated that the plumber returned to the rental unit on February 06, 2014 to repair the problem but the Tenant was not home, so repairs were not initiated.

The Landlord and the Tenant agree that a plumber returned to the rental unit on February 07, 2014, at which time he cut a hole in the ceiling of the rental unit and discovered a problem with the plumbing in the upper suite. The Agent for the Landlord

stated that the plumber did not have the proper parts to complete the repair on that date. She stated that water was not leaking into the rental unit while the plumber was at the unit.

The Agent for the Landlord stated that the plumber made repairs to the plumbing in the upper suite on February 08, 2014. She stated that the Tenant subsequently reported that water was still leaking into the rental unit. She stated that due to the long weekend the plumber did not return to repair the problem until February 11, 2014.

The Landlord and the Tenant agree that the leak was repaired on February 11, 2014.

The female Tenant stated that after the hole was cut in the ceiling, water "poured" into the bathroom every time the occupant of the upper rental unit used the shower. She stated that as a result of the water they could not use their shower or their toilet, although they were able to use a toilet in another area of the rental unit.

The female Tenant stated that there was a very bad odour after the hole was cut in the ceiling. She stated that her husband covered the hole with plastic to help reduce the smell and to reduce the spread of mould. She stated that the odour could be smelled throughout the unit and that the odour gave the Tenant's headaches; it interfered with their sleep; and it exacerbated their allergies.

The Agent for the Landlord stated that she did not notice an odour nor did she detect a presence of mould. She stated that she "tested" the leak and determined that water would "drip" into the rental unit when the shower in the upper unit was running. She stated that a small hole was made in the ceiling above the bathtub, which directed any water leaking from the upper unit into the Tenant's bathtub. She stated that the Tenants could use their toilet and shower in the rental unit at all times, in spite of the leak.

The Agent for the Landlord stated that there was a delay in repairing the ceiling as the Landlord wanted the drywall to dry before making repairs. She stated that by February 19, 2014 the ceiling was almost fully repaired. She stated that the ceiling was not fully repaired until after this tenancy ended because the Tenant had informed the Landlord they were moving and had asked that no further repairs be made to the ceiling.

The female Tenant that the Tenant did not ask the Landlord to delay the repairs until the end of the tenancy. She stated that an agent for the Landlord did inform her, on March 10, 2014, that they would not be disturbed by further repairs and the Tenant did not respond to that statement.

The Tenant submitted several digital images of the bathroom in the rental unit in various stages of disrepair.

Analysis:

Section 28 of the *Residential Tenancy Act (Act)* provides that a tenant is entitled to the quiet enjoyment of the rental unit. In my view, this entitles a tenant to use their bathroom and shower without concern for waste water dripping into the bathroom from another unit.

Residential Tenancy Branch policy guidelines suggest that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Policy guidelines further suggest that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, but they stipulate that 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 concur with these guidelines.

On the basis of the undisputed testimony, I find that a water leak was first reported to the Landlord on January 27, 2014. On the basis of the photographs submitted in evidence and the undisputed testimony, I find that the impact of the leak was limited to the ceiling. This is, in my view, a minor inconvenience that is typically associated to unanticipated plumbing problems and I therefore find that the Tenant is not entitled to any compensation for this inconvenience.

On the basis of the undisputed testimony, I find that a hole was cut in the bathroom ceiling on February 07, 2014, after which time water leaked into the bathroom whenever the occupants of the upper rental unit used the shower. On the basis of the undisputed evidence, I find that this plumbing problem was not fully repaired until February 11, 2014.

I find that the Landlord made a reasonable effort to repair the plumbing problem in a timely manner, although there were delays that were largely beyond the control of the Landlord. In spite of those reasonable efforts, I find that the leak did interfere with the Tenant's quiet enjoyment of the rental unit. Specifically, I find that their ability to use the shower was limited by the need to be concerned that the occupant of the upper suite may use the water while they were showering and the need clean the shower more frequently, as it would have been contaminated by waste water. I therefore find that the Tenant is entitled to compensation of \$10.00 per day for the five days they were impacted, which is \$50.00.

In determining the amount of this award, I have placed little weight on the female Tenant's testimony that there was a smell in the unit after the ceiling was opened, as this testimony was not corroborated by any independent evidence, such as a witness statement from an impartial party, and it was refuted by the Agent for the Landlord.

In determining the amount of this award, I have placed little weight on the female

Tenant's testimony that they experienced health problems as a result of the smell, as her testimony was not corroborated by any medical evidence.

In determining the amount of this award, I have placed little weight on the Tenant's concern that there was mould in the ceiling, as this concern was not supported by any proof of mould and the Agent for the Landlord stated that no mould was detected.

On the basis of the undisputed testimony, I find that repairs to the hole in the ceiling were not initiated for approximately one week after the plumbing issue was resolved. I find this delay to be reasonable, given that the Landlord needed to ensure the repair was adequate and that the ceiling was fully dried before being repaired.

On the basis of the undisputed testimony, I find that repairs to the ceiling were not fully completed until after the tenancy ended, although I have insufficient evidence to determine whether the Tenant requested the delay.

As the repairs to the ceiling were largely cosmetic and the delay did not significantly interfere with the Tenant's ability to use the rental unit, I find that Tenant is not entitled to any compensation for this inconvenience.

I find that any inconvenience associated to this repair was relatively minor and was not reason to end the tenancy. I therefore find that the Tenant is not entitled to any costs associated to their decision to vacate the rental unit.

I find that the Tenant's Application for Dispute Resolution has some merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of \$100.00, which is comprised of \$50.00 in compensation for the loss of the quiet enjoyment of the rental unit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

On the basis of documents submitted in evidence by the Landlord, I find that on February 20, 2014 the Landlord offered to reduce the Tenant's monthly rent by \$50.00 in March of 2014 in compensation for their inconvenience, and that their rent was reduced by that amount in March of 2014. I therefore find that the monetary claim of \$100.00 must be reduced to reflect this voluntary compensation.

On the basis of these calculations, I grant the Tenant a monetary Order for \$50.00. In the event that the Landlord does not voluntarily 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: April 10, 2014

Residential Tenancy Branch

