



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
A matter regarding CAPILANO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ERP RR MNDC

Introduction

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

- a) That the landlord do emergency repairs pursuant to section 32; and
- b) That the landlord repair and maintain the property pursuant to section 33;
- c) Compensation for loss of use and peaceful enjoyment for several months;
- d) A 50% refund of rent from February 2014 until the necessary repairs are completed.

Service:

The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. 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 the landlord has not maintained the property contrary to sections 32 and 33 of the Act and are they entitled to orders that the landlord do necessary repairs? Has the tenant shown entitlement to compensation for loss of use and her peaceful enjoyment for several months and if so, to how much compensation?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a lengthy hearing and both parties submitted much documentary and photographic evidence. The tenant gave evidence that a leak occurred in February 2014 in her bathroom which impacted the unit below. Apparently about the same time, the unit below was treated for pests and the tenant had an influx of cockroaches. Treatment for the cockroaches has been ongoing. The landlord said that some other units have the same problem and the persistence varies according to tenants' lifestyles among other things, but usually it can be addressed in three treatments. Starting in March, 2014, the pest control company reports that they

have treated this tenant's unit seven times and are scheduled again for November 7, 2014. The landlord said that he only noted some dead cockroaches when he inspected in October. The tenant said that her old refrigerator leaked and it seemed that cockroaches got inside through the bottom sealant and bred there. Her refrigerator was replaced on October 10, 2014 after the manager said he got her letter of September 24, 2014 and had a repair person attend and state that the best solution was to replace the old refrigerator.

The tenant alleges there are mould issues in her unit in the bathroom and kitchen which have not been addressed and which are causing her allergic reactions. She said she has had tests and the doctors, by process of elimination, have concluded that she is allergic to the mould. No medical evidence was provided of this. The landlord denies there is mould and has provided a professional inspection report that states there is no mould. The tenant said she was unable to use her shower one day because caulking had to dry after the mould inspection. She said the tub has been caulked six times. The landlord pointed out in the photograph that water is running down the side of the tub which normally should be protected by a shower curtain; he said that they have caulked this corner of the tub a number of times to prevent leaks. He said and the tenant confirmed that there does not appear to be an issue with the faucets or drain but only with water running along and over the edge of the tub during a shower. The tenant provided photographs of red spots on her son's body that she states are allergic reactions to mould when they take a shower. The tenant said they used three curtains but water still leaked around the edge; it causes the tile to come up. Regarding the time line of repairs, the landlord agreed that they knew of a leak in February 2014 but contends the rotted, wet wood and gyprock was cut out quickly and there was a tub surround installed and sealed. He states that to his knowledge, this was fine until he received the complaint letter dated September 24, 2014 wherein the tenant complained that they had just covered over mould issues in the bathroom.

The tenant noted that her kitchen counter had rotted, there was mould under it but the repairperson had cut it out and put clean boards under it just before the mould inspector arrived. The landlord said after she complained on September 24, 2014, of rotting wood, he arranged for the repairperson to come as soon as possible and October 8, 2014 was the first date he could work on it and it was just a coincidence that it was the day of the mould inspection. He noted the mould inspector put cameras behind the walls to do a thorough inspection to satisfy the tenant's concerns. The landlord pointed out in his photograph that the kitchen counter and sink were in good working order but maybe not aesthetically pleasing as they were older and showing wear.

The tenant said her kitchen sink fell in on October 8, 2014 when the repairperson was trying to fix the taps and she had no sink from October 10th to 20th and had to wash dishes in the bathtub during the renovation work. The landlord said this was untrue as he showed in his photograph of September 26, 2014 that the kitchen counters and sink were fine and useable, although not aesthetically pleasing. He said the counters were done in one day and the sink could be used the whole time. The tenant notes that she had complained of her counters on numerous occasions and had been assured they would be replaced but nothing was done for months. She supplied a number of photographs showing black under the sink and cupboards.

The tenant contends she is not getting what she bargained for when she rented her unit in this 35 year old building. She cites the mould issue, repairs not done, cockroach infestation and her resulting poor health. The landlord provided a timeline of reports and repairs being completed. He states everything is 100% complete as of October 27, 2014 and provided photos of the finished work. The tenant stated that the work was not done to her satisfaction yet as they had put stick on tiles in the kitchen and not sealed the cupboards to the floor so cockroaches could still gain entry; she also said the bathroom had only silicone caulking a small gap that was pulled up in the linoleum and water still comes from the shower and puddles on the floor and around the toilet. She said mould gets toxic if wet.

In her letter of September 24, 2014, the tenant asks the landlord to 1) test mould 2) do proper cleanup of mould and rot 3) do proper renovations 4) deal with the cockroach infestation as they thrive on mould.

Included with the evidence are numerous photographs from the parties, a professional mould inspection report, statements and logs from both parties,

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

Analysis:

Section 32 of the Act deals with obligations of the parties:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find the onus is on the tenant/applicant to prove on a balance of probabilities that the landlord is not conforming to his maintenance duties under the Act. Much of the tenant's concern is with alleged mould in her bathroom and kitchen which she states is affecting her health. I find insufficient evidence to support her allegations of mould in the unit. As she stated herself, she is not a mould expert; I find the landlord employed a professional with expertise who did a thorough inspection for mould and even inserted cameras behind the walls. The mould inspector supports the landlord's evidence that there is no mould. Although the tenant provided photographs to support her allegations, I find they are not sufficient evidence of mould but could possibly be blackened old sinks or boards in this approximately 35 year old building. Therefore, I dismiss this portion of the tenant's claim.

In respect to the tenant's claim that renovations were necessary to the kitchen counters and bathroom, I find insufficient evidence that the counters, floor and shower/bathtub did not conform to the requirements of section 32 i.e. *health, safety and housing standards required by law*. I find that having regard to the age of the building, the older counters and bathtub did not make the unit unsuitable for occupation by a tenant. As the landlord stated, the items were not aesthetically pleasing but perfectly useable for most of the time and have since been replaced, including the refrigerator which was not itemized on the tenant's application as a major concern. However, I find the tenant's evidence credible that she had very limited use of her kitchen for a week as the sink fell in while faucets were being repaired; the landlord's timeline supports her evidence as it notes on October 8, 2014, a portion of the counter was removed and on October 20, 2014, the handyman installed a new kitchen counter. The timeline also shows that the tub was caulked on October 8, 2014 and again on October 22, 2014. I find based on this evidence that the tenant lost some use of her kitchen and bathroom for almost two weeks. Since these are essential facilities in a unit, I find her entitled to 25% rebate of October's rent or \$208.50 (835x25%); the parking fee is not included in the calculation as it is not part of the living space.

I find the tenant has been subject to seven treatments for cockroaches with another scheduled for November 7, 2014. I find her evidence credible that the cockroaches migrated during a pest treatment in the unit below as it appears she had no problem

with them until February 2014. She alleges that the cupboards not being caulked to the floor and perhaps the floor not being sealed properly is causing the infestation to continue. Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance

I find evidence of the cockroach infestation illustrates it is significantly and unreasonably disturbing the tenant's peaceful enjoyment of her unit. There is no allegation of the landlord or evidence that this tenant's lifestyle is prolonging this infestation although it may have been encouraged by the refrigerator that leaked until recently replaced. I find her entitled to compensation of \$50 a month for this disturbance from the time of the first treatment in March 2014 to the present (9 months x \$50 = \$450). I find her entitled to an order that the landlord seal any cracks or seams in her unit that may be allowing cockroaches to enter. Together with the new refrigerator and hopefully final treatments, the infestation may cease. I decline to order further rebates based on other repairs as I find the landlord has diligently repaired since September 24, 2014 when written demand was made and has provided photographs of completed repairs.

Conclusion:

I find the tenant entitled to a rent rebate of \$658.50 for the reasons outlined above. I dismiss the other claims of the tenant. To recover the rebate:

I HEREBY ORDER that the tenant's rent for each of December 2014 and January 2015 is reduced to \$515.75 in each month (\$329.25 reduction each month).

I HEREBY ORDER that the landlord immediately seal by whatever means possible all holes into her unit and joints of floors and cupboards in order to inhibit the entrance of cockroaches.

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: November 13, 2014

Residential Tenancy Branch

