



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes ERP, FF

Introduction

This hearing was convened to address a claim by the tenant for an order compelling the landlord to perform repairs. Both parties participated in the conference call hearing.

Issue to be Decided

Should the landlord be ordered to perform repairs?

Background and Evidence

The parties agreed that the rental unit is on the second floor of a multi-storey apartment building.

The tenant testified that in 2014, there was a leak in his bathroom which the landlord repaired but in the tenant's opinion was not properly repaired because the same area is leaking again every time it rains. The tenant suggested that the leaking had been intermittent throughout 2015, but stated that he only spoke to the landlord about the leak once prior to September 2015 and was told to keep an eye on it. The tenant entered into evidence a copy of a letter to the landlord dated September 4, 2015 in which he stated that this was a follow up letter to "multiple phone calls" complaining about the leak. In the letter, the tenant stated that there was mold in the unit and he requested that the damage caused by the water leak to be repaired by September 11 or he would pursue action through the Residential Tenancy Branch. On September 17, the tenant sent another letter in which he stated that the leak had been fixed but the damage created by the leak was still an issue, causing an odour and mold. The tenant requested that that the damage be repaired within a week.

At the hearing, the tenant stated that water was continuing to leak into his unit each time it rained and that the landlord had been in the unit several times to investigate the source of the leak, but had not yet performed the repairs requested in the September 4 letter.

The landlord testified that in September, the tenant made them aware that there was a leak in the unit and stated that prior to September, he was unaware of a leak other than the one which had occurred and been repaired the previous fall. The landlord testified that the 2014 leak was the result of the overflow of a bathtub in an upper apartment and stated that the unit was repaired afterward. He stated that when he became aware of the current leak, he began investigations to determine the source of the water ingress. The landlord stated that although their plumber believed it was improbable that an upper unit had plumbing issues that was causing the leak, out of an abundance of caution, he replaced the plumbing fixtures in the upper units. The leak continued, which led the landlord and his maintenance crew to believe that the leak was coming from the roof, a belief which was reinforced by the tenant's complaint that the leak occurred only when it was raining. The landlord theorized that water is seeping in through a compromised area of the roof, running down the wall of the tenant's bathroom and escaping into the bathroom.

The landlord testified that the roof on the building is a torch on roof which has expended approximately $\frac{1}{2}$ of its useful life and that his roofer has performed a number of spot repairs, ensuring seams were sealed. The landlord has been monitoring the situation and when the tenant reports that the leak has continued after rain has fallen, he arranges for the roofer to conduct further repairs. The landlord testified that he has acted diligently to perform repairs when he becomes aware that they are required.

Analysis

As the parties agree that there is a continuing leak in the rental unit, I find it appropriate to order the landlord to continue his investigations through the help of professionals to determine the cause of the leak. While I appreciate that the tenant wants his unit repaired as soon as possible, it makes sense to me that the landlord first isolate the source of the leak and ensure that it is completely repaired before performing repairs to the tenant's unit.

Although the tenant initially claimed that the leak continued intermittently throughout 2015, the September 4 letter referred to the leak but did not request that the leak be repaired, only that the damage caused by the leak be repaired. The September 17 letter specifically stated that the leak had been repaired. I find it more likely than not that the tenant did not complain about an active leak during 2015 and that if any complaints were made, they were about the mold he believed to be present in the rental unit.

Whatever the case was at the time the September 4 letter was written, it is clear that there is now an active leak, which the landlord described (and the tenant did not

dispute) as a slow leak. I accept the landlord's testimony that he was unaware of the leak until September 2015. I find that the landlord has acted diligently to address the leak and investigate its source, although this process appears to be taking some time as the efficacy of repairs cannot be tested until it rains.

The tenant has requested that I order the landlord to address a problem with mold in the rental unit. However, other than expressing his belief that mold is present, the tenant has provided no evidence to show that mold is present. The photographs show that water has entered the unit and that it has affected the drywall, but they do not show the presence of mold and the tenant has provided no expert evidence to show that mold is present. I will not order the landlord to address a problem that has not been proven to exist.

I order the landlord to continue investigating the source of the leak and conduct whatever repairs are required in order to ensure that water is no longer seeping into the building. When the landlord is certain that the source of the water ingress has been sealed, I order the landlord to effect whatever repairs to the rental unit are required in order to return it to a fully functional and cosmetically pleasing state. Should the landlord discover mold during the course of his investigations, I order the landlord to do whatever is required to remediate that issue and ensure that the rental unit is fit for habitation.

As I have found that the tenant has not proven that there is mold in the unit and as I have found that the tenant did not inform the landlord of the leak until September, I find that the landlord acted quickly of his own accord once he learned of the issue. For this reason, I find that the tenant should bear the cost of his filing fee.

Conclusion

The landlord is ordered to perform repairs as outlined above.

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: October 14, 2015

Residential Tenancy Branch

