



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

This matter dealt with an application by the Tenant for compensation from the Landlord for a rent reduction for repairs not completed and for the time while the repairs are being completed and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 22, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and for a rent reduction?

Background and Evidence

This tenancy started on February 1, 2014 as a fixed term tenancy for one year and then the tenancy continued on a month to month basis. Rent is \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 in advance of the tenancy.

The Tenant said there are two main issues in her application the first is that the Landlord has not repaired the ceiling in her bedroom and the Landlord has not taking action to resolve noise and disturbance issues in the rental complex.

The Tenant said the ceiling in her bedroom cracked and started to fall into the room on April 6, 2015. The Tenant continued to say she contacted the Landlord to repair the ceiling on April 9, 2015 by email and the ceiling is still not repaired. The Tenant said there was a temporary repair done in August, 2015, but the ceiling is still unsafe and it is an eye sore. The rental unit is approximately 1000 square feet and the Tenant said the bedroom is approximately 350 square feet. The Tenant submitted photographs which show a sheet of unpainted ply wood was nailed to the ceiling. The Tenant said she has not used the bedroom to sleep in since April 6, 2015 because the Tenant believes the

ceiling is dangerous and may fall in at any time. The Tenant said this is unacceptable. The Tenant continued to say she is requesting \$200.00 per month for 9 months (April to December, 2015) for the loss of use of the bedroom and the inconvenience and danger of the damaged ceiling. As well the Tenant said she is requesting \$400.00 for the time when the ceiling is being repaired as she will have to move her belongings and she will lose the use of the room for as long as it takes to repair the ceiling.

The second issue the Tenant has requested a rent reduction for is disturbances and noise issues the upper and lower tenants in the complex have caused. The Tenant said the upper tenant has 3 additional people living in the rental unit and they are rowdy and party late into the night on many occasion. The Tenant said she has tried to resolve the noise issues with the upper tenant through talks with them between November, 2014(the time the other occupants moved in) and March, 2015. The Tenant said she was unsuccessful so she requested the Landlord to address the issues. The Tenant said the Landlord and the upper tenant made a Mutual Agreement to End the Tenancy with an effective date of August 31, 2015, but the upper tenant did not move out and the Landlord did not enforce the agreement. The Tenant said the Landlord did not resolve the issue and did not enforce the end of tenancy agreement which would have solved the noise and disturbance problems. As a result the Tenant said she is requesting compensation in the form of a rent reduction of \$200.00 from April to December, 2015, in the amount of \$1,800.00.

The Tenant submitted a large amount of emails and letters between her and the Landlord explaining many of the noise and disturbance problems. The Tenant said the problems were mostly partying late at night and leaving garbage in the backyard and under the back deck. The Tenant also submitted photographs to support her position. The photographs show items and garbage in the yard and under the back deck.

The Tenant also said she hired a firm to do some testing in the unit as a result of the ceiling damage and found lead in the paint. The Tenant said she is requesting \$120.75 to reimburse her for the cost of the testing.

The Landlord said the tenants in this rental complex have had a number of issues and do not get along. As a result the Landlord said she is spending a lot of time trying to manage the situation and make things work. The Landlord said there are three units in the house, the lower, main and upper. The house is an older wood frame construction building and so there is higher noise transference between the units as with a new rental unit. The Landlord said this is an issue that the tenants know about and have accepted. The Landlord continued to say the Tenant wrote her about the ceiling issue in April and the Landlord had a construction person look at the ceiling around the end of April, 2015. The Landlord continued to say there was some discussion of the Tenant moving into the upper unit so they decided to wait on the ceiling repairs.

The Tenant said there was a discussion but it was not agreed that the ceiling would not be repaired or that she would move into the upper rental unit. The Tenant said she wrote many emails and letters to the Landlord to repair the ceiling and the Landlord did

nothing until August, 2015 when the Landlord made a temporary repair to the ceiling. The Tenant said the temporary repair did not improve the situation.

The Landlord said they thought the upper tenant was moving out and the repairs would be made after the upper tenant had moved. The Landlord continued to say the upper tenant would not move out in spite of the Mutual Agreement to End the Tenancy for August 31, 2015. The Landlord said they now have an Order of Possession with an effective vacancy date of November 30, 2015, but the Landlord said they have not serviced the order on the upper tenant as of yet.

The Tenant said that the Landlord has done things like getting an Agreement from the upper tenant to move out and the Landlord obtained an Order of Possession, but the Landlord does not act on the things to resolve the problems. The Tenant said the Landlord has not repaired the ceiling and has not resolved the upper tenant disturbing the rental complex with noise, extra occupants and partying.

The Landlord said this is a more complex issue than just noise and repairing the ceiling. The Landlord said the tenants are not trying to get along and she is overwhelmed with the problems this is causing.

The Tenant said if the Landlord would act on the eviction of the upper tenant the disturbances and noise issues would be resolved.

The Landlord said in closing that she has tried to manage the rental complex as best she can, but the issues between the tenants has become complex and the Landlord said she is overwhelmed by the situation.

The Tenant said in closing that her quiet enjoyment of the rental unit has been unreasonably disturbed by the other tenants in the complex and the Landlord has not resolved the issues. As well the Tenant said the Landlord has not repaired the ceiling so the Tenant has lost the use of the bedroom in her rental unit for 9 months. The Tenant said she is requesting compensation in the form of a rent reduction from April, 2015 to December 2015 in the amount of \$4,170.75.

Analysis

Section 32 of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

As both the Landlord and the Tenant agree the ceiling damage occurred in April, 2015 and the ceiling has not been repaired even after a number of written requests by the Tenant; I find that the Tenant has established grounds for a rent reduction because of the inconvenience and loss of use of the bedroom in the rental unit. The bedroom is

approximately 1/3 of the area in the rental unit; therefore one may conclude the rent should be reduced by 1/3 or $\$1,200.00 \times 1/3 = \400.00 , but the Tenant still has the use of the bedroom; therefore I find reducing the rent by 1/3 is not appropriate. I find the Tenant's claim of \$200.00 per month for 9 months is representative of the loss of use of the bedroom. I award the Tenant \$1,800.00 for the loss of use of the bedroom due to the Landlord not making the repairs to the ceiling in a timely manner. Further I order the Tenant to reduce the monthly rent by \$200.00 until the Landlord has repaired the ceiling in the bedroom to an acceptable standard. This standard is to be structural safe and cosmetically acceptable. The further rent reduction will start in January, 2016 if the ceiling is not repaired.

The Tenant has also requested further compensation of \$400.00 while the ceiling is being repaired. Tenants and landlords have to work together when unexpected things happen. I view the ceiling damage as an unexpected event; therefore I find the compensation of the \$200.00 per month rent reduction previous awarded is sufficient to compensate the Tenant while the repairs are being completed. Consequently, I dismiss the Tenant's request for \$400.00 as compensation for any inconvenience while the ceiling is being repaired.

With regard to the Tenants claim for \$200.00 per month for 9 months because of the disturbance and loss of quiet enjoyment because of the upper tenant's actions; I find that it is the responsibility of both tenants and landlords to make tenancies work. The Tenant said she tried to resolve the issues with the upper tenant from November, 2014 to March, 2015 and she had no success. The Tenant then requested the Landlord to deal with the situation. The Landlord said **all** the tenants in the unit were not getting along and it was a complicated issue. The Landlord did talk with the upper tenant and obtained a mutual agreement to end the tenancy for August 31, 2015, but the Landlord did not act on that agreement and the Landlord let the tenancy continue with the knowledge that the upper tenant was disturbing other tenants with noise and partying. Further the Landlord did obtain an Order of Possession for November 30, 2015 which shows the Landlord was trying to resolve the issues, but again the Landlord did not act

on the Order of Possession. Consequently, I find that the Landlord did undertake steps to resolve the situation in the rental complex, but the Landlord failed to carry through her actions to resolve the issues. As a result I find the Tenant has established grounds for compensation for the loss of quiet enjoyment of the rental unit because of the Landlord's lack of action. As the Landlord took some steps to resolve the conflict in the rental complex; I find the Tenant's claim of \$200.00 per month is not justifiable. The Landlord did address the issues but failed to resolve the problems; therefore I find the Landlord is partially responsible for the Tenant's loss of quiet enjoyment and I award the Tenant \$50.00 per month from April, 2015 to December, 2015 in the amount of \$450.00 as compensation for loss of quiet enjoyment of the rental unit.

Further I find the Tenant's claim for the testing fees in the amount of \$120.75 is a cost that the Tenant did not discuss with the Landlord before the testing was done, therefore it is an issue unrelated to the Tenants claim for a rent reduction. I dismiss the Tenant's claim of \$120.75 for testing fees.

As the Tenant has been partially successful in this matter, she is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing as following:

Rent reduction (April to December 2015):	\$ 1,800.00	
Loss of quiet enjoyment:	\$ 450.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$2,300.00
Balance Owing		\$2,300.00

Conclusion

A Monetary Order in the amount of \$2,300.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

I order a rent reduction of rent of \$200.00 for each month starting January, 2016, until the ceiling in the bedroom is repaired.

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: December 01, 2015

Residential Tenancy Branch

