



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MGMT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to make emergency repairs for health or safety reasons; for the landlord to make repairs to the unit, site or property; for an Order to allow the 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 landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the tenant advised that the landlord has now made the required repairs to the unit and therefore the tenant no longer requires Orders for emergency repairs or other repairs.

Issue(s) to be Decided

Is the tenant entitled to an Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that this tenancy started eight years ago. The tenancy is a month to month tenancy and rent for this unit is currently \$680.00 per month.

The tenant testified that she caused water damage to her own unit and common areas on March 27, 2016 when she accidentally left her bathtub running which subsequently overflowed. The tenant testified that the kitchen and bathroom flooring needed to be replaced and there was also mould under the flooring some of which was caused from the flood and some which may have been there previously.

The tenant testified that she was told by her insurance company that the landlord had to make the repairs and then submit receipts to the tenant's insurance company. The tenant testified that the landlord kept stalling on the repairs and they were not completed until May 27, 2016, two full months after the flood. The only thing that now needs to be done is the rubber strip around the linoleum.

The tenant testified that as this repair took the landlord so long to do, the tenant seeks a rent reduction of an amount at the discretion of the Arbitrator for the two months the repair remained uncompleted.

The landlord disputed the tenants claim. The landlord testified that the tenant was running a bath and then went to use her computer and forgot the bath was running. This flooded her unit and other areas. The tenant did call the emergency number and within one or two hours the landlord had a restoration company attending at the tenant's unit who proceeded to dry out the flood water.

The landlord testified that he later met with the assessor from the restoration company and the tenant; the tenant passed on her insurance details. The landlord then passed these onto the landlord's insurance company. When that assessor contacted the tenant's insurance company they were told the tenant's insurance did not cover this damage. The landlord testified that he was left to sort this damage out. He went to speak to the tenant and said that as the carpets needed cleaning and the linoleum needed to be replaced, the tenant must create some space in her unit for this work to be completed. The tenant was asked to contact the landlord when she had cleared the space.

The landlord testified that he did not hear from the tenant until he received the tenant's hearing documents. The landlord then called the tenant and arranged for the carpet cleaner and the linoleum company to go into the unit to take measurements. The work was completed on May 27, 2016. The landlord testified that they took care of the repairs as soon as they were able even those this damage was caused by the tenant's actions. The landlord testified that they acted in a timely manner to send in the restoration company to protect their property and ensure everything was safe after the flood and it was the tenant that delayed further work by not informing the landlord when she had cleared space in her unit.

The tenant testified that she is covered under her insurance and her insurance company is waiting for the landlord to provide them with the invoices.

The parties agreed to speak after the hearing so the tenant could provide a name and number for her insurance company.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 32 (3) of the *Residential Tenancy Act* (the *Act*) with regard to the tenant's obligation to repair damage caused by the tenant's actions or neglect. This states the following:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I am satisfied from the undisputed evidence before me that this flood occurred as a direct result of the tenant's bath overflowing after she had started to fill it and then forgot it was filling. I find the landlord acted in a reasonable manner by sending in the restoration company to assess the damage and dry out the water caused from the flood. Therefore in accordance with s. 32 (3) of the *Act* the repair of any damage caused by the flood was the responsibility of the tenants not the landlord. The tenant could have contracted this repair out and then made a claim through her own insurance company. If the landlord then needed to make any further repairs to common areas or any other affected units the landlord could have dealt with this via his own insurance company and then claimed any deductible back from the tenant or the tenant's insurance company.

It is my decision; that this repair did not fall under the responsibility of the landlord and therefore any form of compensation for the two months it took for the repair to be completed would not be permitted. The tenant's application is therefore dismissed.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: May 31, 2016

Residential Tenancy Branch