Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EVEREAST INTERNATIONAL ENTERPRISE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction:

This decision was corrected on August 20, 2018. All corrections have been stricken/underlined for clarity.

A hearing was convened on June 04, 2018 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on March 13, 2018 the Application for Dispute Resolution and the Notice of Hearing were mailed to the Landlord. The Agent for the Landlord acknowledged that these documents were received in the mail and I therefore find that they were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act).*

On May 18, 2018 the Landlord submitted 21 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on May 18 16, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 13, 2018 the Tenant submitted 7 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Agent for the Landlord stated that this evidence was not received.

On March 18, 2018 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch. At the hearing on June 04, 2018 the Tenant stated that this evidence was sent to the Landlord, via regular mail, on March 18, 2018. At the hearing on June 04, 2018 the Agent for the Landlord stated that this evidence was not received.

At the hearing on July 26, 2018 the Tenant stated that 8 of the 9 pages of evidence he submitted to the Residential Tenancy Branch in March of 2018 was re-served to the Landlord on June 22, 2018. He stated that he did not re-serve the first page of the tenancy agreement. The Agent for the Landlord acknowledged receipt of the 8 pages of evidence and those 8 pages were accepted as evidence for these proceedings.

On June 01, 2018 the Tenant submitted 8 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlord, via email, on June 01, 2018. The Agent for the Landlord stated that this evidence was received on June 04, 2018.

The Tenant stated that the evidence served on June 01, 2018 evidence was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure because after he received the Landlord's evidence he understood that the Landlord was alleging that the Tenant's evidence package had not been received. I find this explanation to be illogical, as the Tenant did not re-serve the Landlord with his original evidence. Rather, the Tenant served the Landlord with a copy of a Residential Tenancy Branch decision/Orders relating to this tenancy, dated March 12, 2018.

As the copy of the Residential Tenancy Branch decision/Orders relating to this tenancy, dated March 12, 2018, was submitted in evidence by the Landlord and was accepted as evidence, I find that I do not need to determine whether the Tenant's copy of those documents should also be accepted. Those documents are before me and will be reviewed prior to rendering a decision in this matter.

The only other document submitted by the Tenant on June 01, 2018 was a bank statement, which the Tenant contends was submitted to establish that he paid rent for December of 2017. As these proceedings do not relate to a claim for unpaid rent from December of 2017, I find that this document is not relevant to the issues in dispute at these proceedings. Given that the document was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and it is not relevant to issues in dispute at these proceedings, I decline to accept this document as evidence.

All of the documents that were accepted as evidence for these proceedings were reviewed, but are only referenced in this written decision if it is relevant to my decision.

In my interim decision of June 05, 2018 I allowed the Landlord to submit evidence in response to the Tenant's evidence that was submitted in March of 2018. On July 10, 2018 the Landlord submitted 6 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on July 10, 2018. The Agent for the Landlord initially provided an incorrect Canada Post tracking number but was eventually able to provide a correct tracking number.

The Tenant initially stated that he did not receive the evidence the Landlord submitted on July 10, 2018. After much discussion and searching of the Canada Post website, the Tenant located the evidence and it was accepted as evidence for these proceedings.

The hearing on June 04, 2018 was adjourned for reasons outlined in my interim decision of June 05, 2018. The hearing was reconvened on July 26, 2018 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions at both hearings. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of $1,100.00 that was paid at the start of the tenancy?
Is the Tenant entitled to compensation as a result of a leak in the ceiling?

Background and Evidence provided on June 04, 2018:

The Landlord and the Tenant agree that;

- the tenancy began in 2016;
- when the tenancy began the rent was $1,100.00 per month; and
- the Landlord collected a security deposit at the start of the tenancy, which is not a subject of these proceedings.

The Tenant stated that the rental unit was vacated on March 01, 2018. The Agent for the Landlord stated that is was vacated on March 12, 2018.

The Tenant stated that he paid an additional $1,100.00 at the start of the tenancy, which he believed was being collected for “last month’s rent”. He stated that he was never told that this $1,100.00 was collected for “liquidated damages” although he subsequently learned that it was recorded on the tenancy agreement as “liquidated damages”.

The Agent for the Landlord stated that $1,100.00 in “liquidated damages” was collected at the start of the tenancy.

The Landlord and the Tenant agree that the aforementioned $1,100.00 payment was never returned to the Tenant.

The Tenant is seeking compensation of $3,811.29 because there was a leak in the ceiling of the rental unit.

In support of the claim for $3,811.29 the Tenant stated that:

- on December 29, 2017 water leaked through the living room ceiling of the rental unit;
- he understands the leak was the result of a plumbing problem;
- water leaked into the ceiling light;
- the plumber told him he should not use the ceiling light;
- they did not use the ceiling light for the remainder of their tenancy because they thought it was unsafe;
- the water created a large stain on the ceiling;
- within two hours of the leak being detected a plumber repaired the leak and drained the water from the ceiling into buckets;
- the plumber cut two holes in the ceiling in order to repair the leak;
- the Tenants helped mop up the water that entered into their unit;
- the holes in the ceiling were not repaired until January 21, 2018 orf January 22, 2018;
- the ceiling could have been repaired on January 19, 2018 but he asked the contractor to delay the repairs until January 21, 2018 or January 22, 2018;
- the holes were repaired in one day;
- the holes were covered but were not properly blended into the ceiling or painted;
- the ceiling was still stained when he vacated the rental unit;
- they moved their furniture to one side of the room on the day of the leak;

- they left their furniture on the side of the room until the ceiling was repaired;
- they were concerned that mould was growing in the ceiling because it had not been properly repaired; and
- his couch sustained minor water damage.

In response to the claim for $3,811.29 the Agent for the Landlord stated that:

- on December 29, 2017 water leaked through the living room ceiling of the rental unit;
- he understands the leak was the result of a plumbing problem;
- he believes it was a minor leak;
- within two hours of the leak being detected a plumber repaired the leak;
- the plumber cut two holes in the ceiling in order to repair the leak;
- he does not know if water leaked into the ceiling light;
- the holes in the ceiling were repaired sometime near the end of January of 2018;
- the Tenant contributed to the delay in repairing the ceiling, as he was not available on the dates the contractor wanted to make the repairs;
- he believes the holes were properly repaired, although he has not seen the final repair;
- the ceiling was still stained when the rental unit was vacated;
- the ceiling light was not inspected by an electrician; and
- the ceiling light was functional on January 08, 2018.

Background and Evidence provided on July 26, 2018:

The Agent for the Landlord acknowledged that water leaked into the light fixture. He stated that he never looked at the fixture and he does not know if there was water in the fixture at the end of the tenancy.

The Tenant stated the photograph of the light fixture he submitted in evidence was taken near the end of the tenancy. He stated that the line that can be seen on the cover of the light fixture is water that was still in the fixture at the end of the tenancy.

The Agent for the Landlord stated that he does not recall saying that the ceiling was adequately repaired at the first hearing. He stated that the following efforts to complete the repair to the ceiling:

- on January 19, 2018 a contractor he left a message for the Tenant suggesting that the repairs could be completed on January 20, 2018;
- on January 20, 2018 the Tenant advised the contractor that the repairs could

not be made on that date;

- on January 20, 2018 the contractor left a message for the Tenant suggesting that the repairs could be completed on January 21, 2018 at 10:00 a.m.;
- on January 20, 2018 the Tenant advised the contractor the repairs could not be made at noon on January 21, 2018;
- on January 21, 2018 the Tenant rescheduled for January 22, 2018 at 4:00 p.m.;
- on January 22, 2018 the Tenant cancelled the 4:00 p.m.; and
- on January 31, 2018 the contractor left a message for the Tenant asking him to let him know when the repairs could be completed.

The Tenant stated that:

- he postponed the repairs until January 22, 2018 because he had a sore back and could not move furniture in preparation for repairs;
- the contractor came on January 22, 2018 and completed the repairs that are shown in his photographs;
- the contractor told him that he had not been authorized to make further repairs;
- he did not receive a message from the contractor on January 31, 2018; and
- he did not contact the Landlord after January 22, 2018 to advise him the repairs were not complete.

Analysis:

Section 17 of the *Residential Tenancy Act* (*Act*) allows a landlord to require, in accordance with this *Act* and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement. On the basis of the undisputed evidence, I find that the Landlord collected a security deposit at the start of the tenancy, which is not the subject of these proceedings.

Section 17 of the *Act* and sections 6 and 7 of the *Residential Tenancy Regulation* define the refundable and non-refundable deposits that can be collected during a tenancy. None of these sections permit the Landlord to collect the “last month’s rent” or “liquidated damages” at the start of the tenancy.

On the basis of the undisputed testimony I find that the Landlord also collected $1,100.00 at the start of the tenancy. Regardless of whether this $1,100.00 was collected as the “last month’s rent”, as the Tenant originally believed, or whether it was collected as “liquidated damages”, I find that the Landlord did not have authority to collect this deposit. The Landlord did not have authority to collect this $1,100.00, because the Landlord was not authorized to collect either the “last month’s rent” or

“liquidated damages” at the start of the tenancy.

As the Landlord did not have authority to collect the aforementioned $1,100.00 at the start of the tenancy, I find that it must be returned to the Tenant.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch Policy Guideline 6, with which I concur, reads, in part:

> A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected.
>
> A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises. …
>
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).
>
> In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find that the Landlord had an obligation and a right to repair the leak that occurred on December 29, 2017, pursuant to section 32(1) of the *Act*. On the basis of the undisputed evidence I find that the Landlord repaired that leak in a timely manner.

I find that the Landlord also had an obligation to repair any damages that occurred as a result of that leak, pursuant to section 32(1) of the *Act*. Specifically, I find that the Landlord was required to cover the holes in the ceiling that were made to facilitate the plumbing repair. I find that this repair was necessary to ensure the Tenants were not disturbed by dust and debris falling from the ceiling into the rental unit.

On the basis of the testimony of the Tenant I find that the holes in the ceiling were partially repaired on January 22, 2018. I find that the Tenant's testimony in this regard is consistent with the Agent for the Landlord's testimony that he provided on June 04, 2018.

I find that this repair was completed less than four weeks after the date of the leak. Given that it would be reasonable to delay this repair until the ceiling had dried and the repairs were delayed for a few days to accommodate the needs of the Tenant, I find that the repairs were completed in a reasonably timely manner.

I find that the Tenant is not entitled to any compensation related to repairing the leak and covering the holes in the ceiling. I find that the need to mop up the water and move their furniture to facilitate the repairs represents a temporary discomfort/ inconvenience that do not constitute a breach of their right to quiet enjoyment. I therefore find that they are not entitled to compensation for any inconvenience caused by the repairs.

In adjudicating this matter I have placed little weight on the Tenant's testimony that they moved their furniture to one side of the room on the day of the leak and that they left their furniture on the side of the room until the ceiling was repairs. I find that the Tenant could easily have mitigated this disruption by simply moving his furniture back into place once the leak had been repaired and then ensuring the contractor moved his furniture to facilitate the repair to the ceiling in January of 2018..

On the basis of the testimony of the Tenant I find that water leaked into the ceiling light as a result of this plumbing problem. In reaching this conclusion I was influenced, in part, by the Agent for the Landlord's testimony that he does not know if water leaked into the ceiling light. In reaching this conclusion I was further influenced by the photograph submitted in evidence in evidence that shows a water stain around the base of the ceiling light. I find that this photograph corroborates the Tenant's testimony that

water leaked into the light.

I find that the Landlord was obligated to repair the ceiling light that was impacted by the leak, pursuant to section 32(1) of the *Act*.

On the basis of the testimony of the Tenant I find that this light was not repaired prior to the end of the tenancy. I find that the Landlord submitted no evidence to corroborate his statement that the light was functional on January 08, 2018. More importantly, I find that the Agent for the Landlord's testimony that the ceiling light was not inspected by an electrician causes me to conclude that the Agent for the Landlord's testimony that the ceiling light was functional on January 08, 2018 was not based on the opinion of a qualified expert.

On the basis of the undisputed evidence I find that the ceiling was not fully repaired after the leak. Specifically, I find that the holes in the ceiling were not repaired in a cosmetically appealing manner and that the stains in the ceiling were not covered with paint.

I find that failing to repair the ceiling in an aesthetically pleasing manner and failing to provide the Tenant with a functional ceiling light reduced the value of this tenancy, for the period between January 22, 2018 and the end of the tenancy, by $200.00.

In adjudicating the amount of compensation due to the Tenant I have placed no weight on the Tenants' submission that his couch sustained minor water damage. In the absence of evidence, such as a photograph, that establishes the extent of the damage, I am unable to award compensation for damage to the couch.

In adjudicating the amount of compensation due to the Tenant I have placed no weight on the Tenants' testimony that he was concerned about mould in the rental unit. In the absence of evidence that indicates there was mould in the unit, I am unable to award compensation as a result of mould.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $1,400.00, which includes a return of the $1,100.00 that was collected at the start of the tenancy; $200.00 for a loss of quiet

enjoyment; and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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: July 27, 2018
Corrected: August 20, 2018

Residential Tenancy Branch