



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, ERP, RR, PSF, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order Requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act (Act)*; for an Order requiring the Landlord to make repairs; for an Order requiring the Landlord to provide services or facilities; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that sometime in February of 2019 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch were delivered the Agent for the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 26, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on February 22, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

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

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to make repairs after the roof leaked?

Are the Tenants entitled to a rent reduction as a result of the leak?

Preliminary Matter

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that the claim is limited to what is stated on the Application for Dispute Resolution.

On the Application for Dispute Resolution the Tenants declared that the roof had been leaking; water has leaked into the bedroom through a light fixture; the leak has exposed asbestos in the ceiling; and there are unsafe levels of asbestos in the bedroom. These are the issues that will be considered at these proceedings.

In a letter that appears to be written to the Landlord, dated February 01, 2019, the Tenants refer to many other deficiencies with the rental unit. As these issues are not mentioned on the Application for Dispute Resolution, they will not be considered at these proceedings.

The Tenants retain the right to file another Application for Dispute Resolution regarding other deficiencies with the rental unit.

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on October 15, 2018;
- rent of \$2,700.00 is due by the first day of each month;
- water leaked through a light fixture of one of the bedrooms;
- the leak was reported to the Landlord in November of 2018;
- as a result of the leak there is a hole in the ceiling of one bedroom; and
- the hole in the ceiling has not yet been repaired.

The Tenant stated that the leak in the roof was repaired in early December of 2018. The Agent for the Landlord stated that the Landlord repaired the leak in the roof, although she does not know the date of the repair.

The Agent for the Landlord stated that contractors attempted to repair the hole in the ceiling on at least five occasions, but the Tenant would not allow the repair.

The Tenant stated that the Landlord has never attempted to repair the hole in the ceiling, although a contractor did check moisture levels in the unit on February 05, 2019, and determined that the area had dried.

The Agent for the Landlord and the Tenant agreed that the ceiling should be repaired as soon as possible.

The Tenant stated that she was concerned about asbestos in the rental unit so she asked the Landlord to have the rental unit tested for asbestos. She stated that the Landlord had the unit tested for asbestos and a copy of that report was submitted in evidence by the Tenant. This report says there is 1% asbestos in drywall tape and texture coat in various locations in the rental unit.

The Tenant stated that she was told by the person who tested the rental unit for asbestos that the levels of asbestos found were unsafe and that the bedroom with the hole in the ceiling should not be occupied. She stated that the City informed her that Worksafe BC should be contacted before asbestos was removed from the rental unit and Worksafe BC told her that the Landlord was required to contact them prior to repairing the ceiling.

The Agent for the Landlord stated that she does not know how to read the asbestos report and that she has no evidence that indicates there are unsafe levels of asbestos in the rental unit. The Landlord submitted an email the Agent for the Landlord sent to the Tenant, in which the Agent declared that her online research indicated that products containing more than 1% of asbestos minerals are considered to be asbestos-containing.

The Tenants are seeking compensation for being unable to use the bedroom with the hole in the ceiling. She stated that her co-tenant stopped using the bedroom because the Tenant believed it was contaminated with asbestos.

The Agent for the Landlord stated that the Tenants were able to use the bedroom, in spite of the hole in the ceiling.

Analysis:

Section 32(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must 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. I find that this section requires landlords to repair leaks in a roof and to ensure the any associated damage is properly repaired.

The person filing an Application for Dispute Resolution bears the burden of proving that the other party failed to comply with a term of the tenancy agreement or the *Act*. In these circumstances the burden of proving that the Landlord did not comply with their obligation to repair the ceiling in the bedroom rests with the Tenants.

On the basis of the undisputed evidence I find that there was a leak in the roof and, due to that leak, there is now a hole in the ceiling of one of the bedrooms. I find that the Tenants have submitted insufficient evidence to establish that the Landlord did not make reasonable attempts to repair the hole in the ceiling but was prevented from doing so by the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Agent for the Landlord's testimony that the Tenant refused to allow the repairs to be made or that refutes the Tenant's testimony that the Landlord made no attempt to repair the ceiling.

Given that the Landlord continued to monitor the ceiling to ensure it was dry and the Landlord has declared its intent to repair the hole in the ceiling as soon as possible, I find it more likely that the Landlord attempted to repair the ceiling but was prevented from doing so by the Tenant. Given the Tenant's obvious concern about asbestos in the unit I find it likely she was preventing the repairs because of her concerns with the asbestos.

On the basis of the undisputed evidence I find that the Landlord now intends to repair the ceiling as soon as possible.

As the Agent for the Landlord stated, during the hearing, that the ceiling will be repaired, I hereby Order the Landlord to comply with that commitment no later than March 30, 2019. While making this repair I hereby direct the Landlord to use qualified tradespeople and that the Landlord must ensure that those tradespeople comply with all industry standards regarding repairing drywall and associated materials that contain 1% asbestos.

I further Order that the Tenant does not have the right to prevent the Landlord from making those repairs, providing the Landlord provides notice to enter the rental unit that complies with section 29 of the *Act*.

I find that the Tenants have submitted insufficient evidence to establish that there are unsafe levels of asbestos in the rental unit. I therefore will not be ordering the Landlord to remove asbestos from the rental unit.

In determining that the Tenants have submitted insufficient evidence to establish that there are unsafe levels of asbestos in the rental unit, I was influenced by the absence of evidence that establishes that drywall tape and texture coats that contain 1% asbestos are unsafe and should be removed from a rental unit.

In adjudicating this matter I have placed limited weight on the Tenant's testimony that the person who tested the rental unit for asbestos told her that the levels of asbestos found were unsafe and that the bedroom with the hole in the ceiling should not be occupied. Even if I accepted that this information was provided to the Tenant, I find that the information is subject to the frailty of hearsay evidence. I find it entirely possible, for example, that the person making the statement intended to convey that it would be unsafe to occupy the room until the drywall had dried or that it was unsafe to occupy the room while asbestos was being removed. Without direct evidence from the person who tested the rental unit, I find this hearsay evidence is of limited evidentiary value.

In adjudicating this matter I have placed limited weight on the Tenant's testimony that the City informed her that Worksafe BC should be contacted before asbestos was removed from the rental unit. As I have not ordered the Landlord to remove asbestos and there is no indication that the Landlord intends to remove asbestos from the rental unit, I find that this information is irrelevant.

In adjudicating this matter I have placed limited weight on the Tenant's testimony that Worksafe BC told her that the Landlord was required to contact them prior to repairing the ceiling. As I do not know what information was provided to Worksafe BC by the Tenant, I find that this information is largely irrelevant. I have ordered the Landlord to make repairs to the ceiling in a manner that complies with industry standards and I fully expect the tradesperson to contact Worksafe BC prior to making repairs if that is the industry standard.

As the Tenants have submitted insufficient evidence to establish that there are unsafe levels of asbestos in the rental unit, I find that the Tenants have failed to establish that

they could not use one of the bedrooms in the rental unit. I therefore find that the Tenants are not entitled to compensation for being unable to use the entire rental unit for any extended period of time.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed, 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: March 04, 2019

Residential Tenancy Branch