



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses.

Since the landlord attended the hearing and submitted evidence for the hearing, I find that the landlord was sufficiently served Notice of Hearing and Application for Dispute Resolution pursuant to section 71(2)(c) of the *Act*.

Preliminary Matter: Service of Landlord's Evidence

The landlord testified that they delivered their evidence to the property management company and the landlord did not know if the evidence was delivered to the tenants. The tenants testified that they did not receive the tenant's evidence five days before the hearing. The *Residential Tenancy Branch Rules of Procedure*, Rule No. 3.15 establishes that the respondent's evidence intended to be relied on at the hearing must be received by the applicant not less than 7 days before the hearing.

I am not satisfied that the landlord served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* stated above.

Residential Tenancy Branch Rules of Procedure, Rule No. 3.12 states that evidence that was not served properly may be excluded if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this matter, I find that the acceptance of the respondent's evidence without being served on the applicant would prejudice the tenants and breach the principles of natural justice.

Accordingly, I exclude all of the landlord's evidence. The landlord's evidence will not be considered in my rendering of this decision.

Issue(s) to be Decided

Are the tenants entitled to an order that requires the landlord to make repairs to the rental unit pursuant to sections 32 and 62?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties agreed that this tenancy started in August 2015. The tenants testified that they noticed that the ceiling above the shower/bathtub was wet in March 2019. The tenants testified that they reported the condition to the landlord's property manager the same day. The property manager sent repair personnel to the rental unit and they removed a section of the ceiling above the shower/bathtub.

The landlord testified that the ceiling was opened to investigate the source of the water damage. It was initially suspected that water was leaking from a unit about the rental unit. It was eventually determined that the water on the ceiling was not leaking from above. Rather, the water accumulation was caused by a spray from the showerhead in the shower. The tenant testified that the showerhead came with the rental unit.

The parties both agree that the ceiling above shower has not been repaired.,

Analysis

Section 32 of the Act states the following:

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

I find that, by leaving a gap in the ceiling above the shower/bathtub, the landlord is not maintaining the rental unit in a "state of decoration and repair that complies with the health, safety and housing standards required by law." The removal of the ceiling barrier permits the entry of the substances into the rental unit from the space above the rental unit and it permits the exudation of water and steam from the rental unit into the ceiling space above the shower/bathtub. I find that this is not healthy, safe not within acceptable housing standards.

Accordingly, pursuant to section 32 and 62 of the *Act*, I hereby order the landlord to repair the ceiling above the shower/bathtub by covering the gap in the ceiling with appropriate construction materials.

Since the tenants have prevailed in this matter, the tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from ONE future rent payment to recover the filing fee.

Conclusion

I hereby order the landlord to repair the ceiling above the shower/bathtub by covering the gap in the ceiling with appropriate construction materials.

The tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from ONE future rent payment to recover the filing fee.

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 01, 2019

Residential Tenancy Branch