Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1100716 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing, and the landlord was represented at the hearing by it's counsel, VR. The landlord also had DS, the former property manager and maintenance worker AM attended to provide testimony. As all parties were present, service of documents was confirmed. The landlord acknowledged receipt of the Notice of Dispute Resolution Proceedings package, including a 26-page file entitled, AllScannedDocumentEvidence.pdf.

The landlord did not acknowledge service of any other evidence from the tenant, although during the hearing, counsel indicated he has viewed a 7-second-long video that the landlord initially denied receiving. The tenant testified that she served the owner of the landlord's company, "T" with the evidence in May at her office in Delta. She followed up with "T" to confirm "T" could access the digital media. A copy of the emails between the tenant and "T" was provided as evidence. At the commencement of the hearing, I advised the parties that I would accept all the tenant's evidence and that if the landlord objected to any piece of documentary evidence referred to by the tenant that was not in the landlord's possession, I would rule on it's admissibility. During the hearing, the landlord made no objections to any of the tenant's evidence.

The tenant did not receive any of the photos the landlord provided to the Residential Tenancy Branch for this hearing. Both counsel and the property manager attending on

behalf of the landlord were unable to provide testimony regarding whether it was served upon the tenant and consequently, that evidence was excluded. A single letter from a roofing company was acknowledged received by the tenant and it was ruled as admissible.

Preliminary Issue

At the commencement of the hearing, I inquired whether the named landlord in the application for dispute resolution was the tenants' landlord, as the name on the tenancy agreement appeared to be different. The parties agreed that the named landlord on the application was the tenants' landlord from the start of the leaking roof issue up until the date the building was sold, January 17, 2021.

Issue(s) to be Decided

Is the tenant entitled to a reduction in rent for being deprived of quiet enjoyment of the rental unit and a reduction in the usable living space in the rental unit?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant LC gave the following testimony. She and the co-tenant live on the top floor of a 4-storey building. Some time just before January 2020, the landlord allowed a cellular phone company to erect a cell tower on the building roof, causing a leak in the tenants' unit. On January 18, 2020, the tenant recorded a video of the water cascading down their ceiling and onto the floor. The tenants used garbage cans, pots and whatever else they had available to place all around the unit to catch the dripping water.

The tenant testified that the landlord replaced a 4' by 8' part of their ceiling and it is noted in the tenant's documents that the landlord compensated the tenants with a $100.00 rent reduction.

The tenant testified that the leaking continued throughout the year. Every time it rained; the ceiling would drip. There were approximately 30 big leaks throughout the year. The landlord's solution was to install loud water pumps on the roof right above their heads. They were noisy and didn't handle the job well as water continued to come in. Sometimes, the landlord forgot to turn the fans off. The tenant testified that despite repeated complaints, many in writing by email, the landlord didn't fix the problem. The tenants testified that approximately one third of their living space was unusable due to the leaking ceiling. The area was in their living room and a second bedroom and photos of the space were provided as evidence. Further, the loud noise of the fans above their heads caused the tenants to lose sleep. The tenants seek compensation at $100.00 per month for the lack of quiet enjoyment of the unit and a return of 1/3 of their rent for not being able to use the space.

The landlord's counsel gave the following submissions. The owner of the building allowed a cell tower to be installed on the roof of the building, causing leaks in the tenant's unit. His client advised the purchaser of the building about the leak issue and counsel submits that the leaking roof became the new purchaser's responsibility once sold. The sale took place on January 17, 2021.

The landlord called witness AM who testified that he attended the tenant's unit in January 2020, removed the wet ceiling and phoned a roofing company to look at it. AM proceeded to replace the ceiling. The roofing company looked around but couldn't find the leak. A joint statement from the roofing company and the witness AM submitted as evidence by the landlord states the roofing company visited the building 6-7 times during the months after the sale of the building to try to determine the problem prior to ripping the ceiling off on May 26, 2022. Work was done between June 4 and 6, and it was finally determined that the bolts on the cell tower beams were leaking water.

The same witness AM testified that back in January 2020, when he went on the roof with the roofing company, they couldn't find the leak, but the roofer proceeded to "*slap some roof paint*" on the roof. There were no complaints from the tenants from that time until the following year, January 2021. Water was coming through a light fixture and AM changed the light fixture for the tenants.

Property manager DS testified that it was difficult to find tradespeople in the winter. AM put pumps on the roof, yet the tenant kept sending emails after they were no longer the landlords. "T", the building owner, told DS the property manager, to give the emails to the new owners to take care of.

Analysis

The tenants seek an order under section 65(1)(c) of the Act which states:

65(1) Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(c)that any money paid by a tenant to a landlord must be

(i)repaid to the tenant,

(ii)deducted from rent, or

(iii)treated as a payment of an obligation of the tenant to the landlord other than rent

The landlord does not dispute the fact that they had a cell tower installed which caused a leak in the building's roof which eventually led to the leak in the tenant's top floor unit. The evidence that there was a catastrophic failure of the roof is evident in the photographs and video evidence provided by the tenant.

The landlord's witnesses AM provided testimony that immediately following the leak, they had a roofing company come inspect the roof, "slap some roof paint" on a suspected water ingress spot on the roof, then AM patched up the spot in the ceiling of the tenants' unit where the "cascade" of water fell. Further, the landlord installed pumps on the roof where water would collect.

During a tenancy, a landlord is bound by section 32 of the Act which states:

Landlord and tenant obligations to repair and maintain

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 the landlord fell short of their duty as required under section 32 from the time they allowed the cell tower to be installed up until the time they sold the building to the new purchaser. Given the extent of water falling into the tenants' rental unit, it is obvious

that a “slap” of roofing paint would not remedy the extent of damage done to the roof by the cell tower installation. I also find it difficult to reconcile that it took approximately a year and a half and a change of the building’s ownership before the cause of the leak could be determined.

The landlord provided evidence of having a roofing company visiting the residential property 6 – 7 times **after the sale of the building**. This means that the landlord appearing before me didn’t take any meaningful steps to rectify the issue; instead, this landlord used a temporary measure of placing loud water pumps on the roof and hired a roofer with unknown credentials to “*slap some roofing paint”* on the suspected area of ingress and leave. This remedy is followed up by cosmetic patching up the tenants’ ceiling. The actual repair of the roof was never done while the landlord owned the residential property. I find the landlord’s actions are inadequate and fell short of the obligation to repair and maintain the residential property as required under section 32.

Section 28 of the Act deals with a tenant’s right to quiet enjoyment.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a)reasonable privacy;

(b)freedom from unreasonable disturbance;

(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d)use of common areas for reasonable and lawful purposes, free from significant interference.

I have read the tenants’ document entitled “AllScannedDocumentEvidence.pdf”. In it, the tenants indicate loud pumps were put on the roof directly above their bedroom, causing them to lose sleep. I accept that the tenants were deprived of quiet enjoyment by the landlord by the landlord’s failure to properly fix the leaking roof. Consequently, for failing to provide the tenants with quiet enjoyment, I award the tenants $100.00 per month for the 12 months the roof remained unfixed and temporarily remedied with loud pumps directly over the bedroom. I reduce the tenants’ rent for this period by **$1,200.00** and order the landlord to repay that sum to the tenants pursuant to section 65(1)(c).

In the same document and during the tenants' testimony, the tenants indicated their possessions were put into plastic bins and moved out of the living room to protect them from water. The tenants' primary and secondary bedrooms were stacked with plastic bins, forcing the tenants to do their daily activities in the bedroom and office and sleep in the dining room. Although given the opportunity, the landlord did not dispute the contents of this document or cross examine the tenants on it. Based on the diagram of their unit provided, I am satisfied the tenants were deprived of approximately one third of their living space from January 2020 to January 2021, the period of time this landlord was obligated to provide the tenants with a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. As rent was $866.13, one third of the rent is $288.71. I award the tenants [$288.71 x 12 = **$3,464.52**].

The parties agree that this landlord sold the building on or about January 17, 2021. The tenancy agreement was taken over by the new owner and that new owner is assumed to have taken on both the assets and the liabilities of the building they purchased. Consequently, I can only award compensation to the tenants for the timeframe when this landlord was obligated to fix the leaking roof, between January 2020 and January 2021. In other words, this landlord has no duties, responsibilities, or obligations toward the tenants beyond that time. The tenants are not entitled to further compensation from this landlord.

As the tenants' application was successful, the tenants are entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I award the tenants a monetary order in the amount of **$4,764.52**.

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: August 29, 2022

Residential Tenancy Branch