



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, RR, RP, PSF, LRE, OLC**

Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act;
3. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act;
4. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act;
5. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act; and,
6. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on October 7, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Tenant’s NoDRP package. I find that the Landlord was deemed served with the NoDRP package on October 12, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenant with their evidence by Canada Post registered mail on January 17, 2023. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. On January 19, 2023, Canada Post left a notice card indicating where and when to pick up the item. The Tenant maintained that she did not receive the Landlord’s evidence. I find that the Landlord’s evidence was deemed served on the Tenant on January 22, 2023 pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties’ testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute in her application, the most urgent of which is the monetary claim for compensation. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant’s requests for compensation for her monetary loss and a rent reduction. The Tenant’s other claims are dismissed with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on September 1, 2005. Monthly rent is \$796.00 payable on the first day of each month. No security deposit or pet damage deposit were collected.

On July 26, 2022 evening, the Tenant experienced something more than drips of water coming out of her ceiling which she said were better described as a flood into her rental unit. Water was also pouring out of her kitchen light fixture. The Tenant immediately called emergency services. The Building Manager came to investigate, then headed upstairs to find the source of the water.

After the Building Manager left, the Tenant noticed that more holes appeared in her kitchen, dining room, and living room ceilings. The Tenant testified that stucco from the ceiling was falling onto her floor and table. The Building Manager came back with the water restoration person, and said that he would return in three days. By the next morning the water had stopped. The Building Manager never returned. The Tenant uploaded pictures of water-stained walls and ceiling in her rental unit.

The Tenant said she was left with water stains on her ceiling and walls, there were holes in the stucco, and the rental unit smelled like a sewer. On September 19, 2022, the Tenant had a restoration person come in and assess her rental unit. An email from the restoration person dated the same day stated he performed a moisture check, and the ceiling and walls were dry. He noted there was *"quite a bit of water staining on the ceiling in the kitchen, the dining room, and the living room. Mold can start to grow after 48-72 hours, and this happened on July 26th almost 2 months ago. There hasn't been any drying equipment as per the tenant and there has not been any demo yet. There is a very high chance there is black mold."*

The Tenant stated that someone should have been checking for black mould. On October 3, 2022, after filing for dispute resolution, the Tenant had to leave her rental unit for 8 days. She stayed in a respite suite in the residential property. When the Tenant returned, her ceilings and walls in the kitchen, dining room and living room had been replaced.

The Tenant has experienced stress and anxiety due to all the events surrounding the flood in her rental unit. The Tenant read online that black mould is fatal for people with asthma. The Tenant has asthma, and her doctor has provided her with a renewal of her buffer for the asthma, as well as a prescription to relieve the anxiety and stress she has experienced. Because the Tenant felt unheard and because of the negligence of the Building Manager, the Tenant stated she has been left with feelings of helplessness.

The Tenant is seeking \$2,005.00 in monetary compensation which includes replacement of four towels at \$12.99 plus GST each, one area rug for \$69.99 plus GST, a paper world map for \$24.99 plus GST, \$0.43 for medication to help the Tenant sleep and reduce anxiety, cost for two months rent of \$763.00 per month for her loss of quiet enjoyment, and a rent reduction of \$100.00 per month until the repairs were completed.

The Building Manager maintained that there was not that much water that flowed into the Tenant's rental unit. He said he went into the Tenant's unit with his vacuum and he removed a small amount of water. He said there was small drips of water going into a bucket. He vacuumed the water from the second-floor hallway. At the time of the water leak, water was flowing out of the Tenant's light fixture, but there was no visible water in the ceiling at the point when they first went into the rental unit. The Building Manager testified there were no towels on the floor in the Tenant's rental unit.

The Building Manager testified that the Tenant did not approach him to ask about repairs from July 26, 2022 until the Tenant complained to the Property Manager. He stated he did see her a few times and he asked her when he could come and check for any damages, but he claimed she told him she was not available. It was only when she allowed him in, was he able to see the damage from the water leak. Fans were only situated in the third and second floor hallways.

The Landlord testified that after some time, staining on the Tenant's walls and ceiling became visible, and the housing corporation requested that the repairs be completed. The Landlord stated that they paid \$14,400.00 to complete all restorations to the Tenant's rental unit.

The Landlord testified that a remediation report completed by a certified mould technician stated that no mould was observed in the rental unit. The Landlord's restoration person diagnosed the area stating the drywall should have been assessed by a water damage technician at the time of the event, as incomplete drying can contribute to mould growth within 72 hours. A survey detail at the end of the Tenant's

unit report dated October 11, 2022 confirms no mould was found in the entry, kitchen, dining room and living room. The Landlord's repair team stated:

...

We take all mold concerns seriously, and in an abundance of caution we treated all of the exposed cavities with the neutral disinfectant to kill any random spores.

In this case, the conclusion is that the flash flood, did not settle or get trapped long enough in order to form any mould, or rot, condition in the areas surveyed, and destructively removed and repaired. Our opinion is that there was no hazard present which could have affected the health or safety of the tenant.

The Landlord confirmed that the Tenant went into a respite unit in the residential property, but it was for five days, not eight as stated by the Tenant.

The Landlord understood after the Tenant's testimony that she had insurance which would cover her contents. He questions why should the Landlord be responsible for her home contents if she had insurance.

The Landlord notes the Tenant uploaded a drug receipt, but he stated that the Tenant did not upload any doctor's note why she required this prescription.

The Landlord confirmed that the water that flowed down into the Tenant's rental unit originated from the kitchen in the unit above hers. The water had overflowed from the upstairs sink for about 20 minutes. The Landlord confirmed it was not sewer water.

In reply, the Tenant said she did not have insurance, and the new home insurance she did get did not go into effect until September 2022.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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.*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant’s rental unit was impacted by a significant leak caused by an upstairs tenant’s sink overflowing. The Landlord’s restoration person called it a flash flood. The Building Manager came into the Tenant’s rental unit, saw the leak, and immediately went upstairs to determine its source. The Tenant said at the time the water was flooding into her rental unit she testified that a kitchen carpet was completely soaked by the dirty, leaking water, and she also placed her own towels down on the floor to pick up the excess water. The Tenant said more and more holes appeared in her ceiling and stucco started falling on her floor and table. She placed buckets around to catch the water that was leaking into her unit. The Tenant claims a large wall map was ruined due to the water dripping down her wall.

By the following morning, the leaking water had stopped. The Building Manager did not come back to the Tenant's rental unit. However, the Building Manager said he saw the Tenant a few times after the flood, but she told him she was not available to show him the inside her rental unit.

The Tenant was left with water-stained walls, and holes and water stains on her ceiling. The Tenant also submitted that the rental unit smelled like a sewer. The Tenant called in a restoration person who subsequently wrote the Tenant on September 19, 2022 saying, *"Mold can start to grow after 48-72 hours, and this happened on July 26th almost 2 months ago. There hasn't been any drying equipment as per the tenant and there has not been any demo yet. There is a very high chance there is black mold."* After a protracted period, the Landlord had the Tenant's rental unit repaired with new ceilings and walls in the kitchen, dining room and the living room.

The Landlord had their own restoration company come in on September 16, 2022 to assess the damage and a certified mould technician determined there was no mould found in the entry, kitchen, dining room and the living room of the Tenant's rental unit. The Landlord's restoration company did state investigations should have happened soon after the water flood had occurred. I find the Landlord breached Section 32(1) of the Act by not governing themselves in a timely fashion.

I find the Tenant proved she lost some household items and is entitled to compensation for their replacement, valued at:

4 towels - \$12.99 each + GST = \$54.56
1 area rug - \$69.99 + GST = \$73.49
1 large wall map - \$24.99 + GST = \$26.24
TOTAL: \$154.29

RTB Policy Guideline #6-Entitlement to Quiet Enjoyment assists parties to understand issues that are likely to be relevant in a breach of quiet enjoyment claim. The basis for a finding of a breach of quiet enjoyment is set out in the guideline as:

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 landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it. (emphasis mine)

The events of the July 26 water leak were unfortunate; however, I find the discomfort and inconvenience to the Tenant was temporary. I find the Tenant has not proven that her entitlement to quiet enjoyment was so substantial that compensation should flow, and I do not grant compensation under this claim.

I award the Tenant a \$125.00 rent reduction for the two months she had to wait for assessments and repairs to be completed in her rental unit by the Landlord. The Tenant is entitled to a rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law. Mould can grow in 72 hours as reported by both the Tenant's restoration person and the Landlord's restoration company; and fortunately no black mould was found. The Landlord's restoration technician stated that investigations should have happened soon after the water flood had occurred, and I find the Landlord was negligent in this regard. I award the Tenant a total **\$250.00** rent reduction.

The Tenant is granted a total monetary award of **\$404.29**. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$404.29 from next month's rent due to the Landlord.

Conclusion

The Tenant is provided a monetary order in the amount of \$404.29 with this decision. I AUTHORIZE the Tenant to withhold \$404.29 from next month's rent otherwise payable

to satisfy the monetary order, and in doing so the Landlord must consider the rent paid in full.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 06, 2023

Residential Tenancy Branch