



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNR, MNDC, & FF

Introduction:

This hearing dealt with an application by the tenants seeking compensation for the cost of emergency repairs and for compensation due to loss under the *Act*. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Are the tenants entitled to compensation under the *Act*?

Background and Evidence:

This tenancy began on September 1, 2007 for the monthly rent of \$1,300.00 and a security deposit of \$650 paid on August 31, 2007. The landlord and the tenants are in a dispute about what the agreement was with respect to the payment of utilities. The tenants submit that the verbal agreement reached was that the tenants would pay for the cost of cable and internet, which was shared with the occupant in the lower suite of the rental unit, and there would be no charge for electricity.

The tenants submitted that the landlord approached them to change this agreement, in writing, on approximately April 14, 2008 and September 24, 2008. In November 2008 the landlord served the tenants with a ten day Notice to End Tenancy due to failure to pay utilities. As a result of this notice the tenants' paid the landlord this sum.

After receiving this notice the tenants filed this application, including additional requests to be compensated for the following issues/events:

1. October/November 2007: loss of laundry facilities;
2. November/December 2007: loss of hot water;
3. December 2007: reimbursement of the cost to change locks due to another occupant accessing their rental unit without permission;
4. May 2008: reimbursement for damage caused to tenants' vehicle by guest of lower unit occupant; and
5. August 2008: reimbursement for replacing kitchen faucet.

Other issues raised by the tenants included issues relating to disturbances caused the daughter of the lower unit occupant. Problems included the alleged damage to the

tenants' vehicle; illegal drug use including discarding needles in the yard and illegally accessing the tenants' rental unit. There was also another isolated issue when the tenants' rental unit was filled with smoke due to cooking done by the lower occupant. This apparently led to the discovery that there were no smoke detectors in the rental unit. Finally, there is a dispute between the tenants and the lower occupant respecting the use and cleanliness of the shared laundry room.

The landlord denies that there was any verbal agreement and submitted that the tenants refused to sign the addendum addressing how utilities would be paid. She indicated that an agreement would be reached with the lower unit occupant. The landlord provided what she claims was the addendum which the tenants refused to sign. This document is not dated or signed.

The landlord acknowledged the problem in December 2007 when someone illegally gained access to the tenants' rental unit and she approved the tenants request to change the locks. The landlord submitted that she has never received a bill or a copy of the key to the new locks.

The landlord submits that the tenants were only without the laundry facilities for a brief period of two weeks. They were aware of the problem and it was resolved within days after they questioned how long it was taken. The landlord submits that she also responded to the failure of the hot water tank and replaced it within a reasonable time frame.

The landlord denies the alleged issues respecting the cleanliness of the laundry room and she stated that the lower occupant denied owning the clothes that were apparently left around. The landlord also denies having received any previous complaints about needles in the yard and submitted that action has been taken to remove this individual from the property. This individual is no longer a welcome guest.

The landlord submits that the tenants claim that this individual caused the damage to the tenants' vehicle is not supported by the evidence. She submits that it is only a speculative conclusion and that the police were unable to charge anyone due to the damage.

The landlord denies that the tenants have not been reimbursed for minor repairs. She submits that there have been no emergency repairs for which the tenants had to pay for. She stated that the tenants have been reimbursed for a sink drain and kitchen taps, even though no receipts have been provided. She submits that no agreement has been made to reimburse the tenants for labour. The landlord submits that she is not responsible for recovering the cost for the replacement of locks based on a call out fee.

Although the tenants' called forth a witness his evidence was not necessary in coming to a decision and I will not include the witness' evidence in this decision.

Analysis:

There is one central issue between the landlord and the tenant. What was the agreement, oral or otherwise, respecting the payment of the electrical bills for the entire

rental unit. I find that most of the other issues, including the tenants' complaints about the lower occupant, are driven from the escalation of this main issue when a Notice to End Tenancy was served. Prior to the escalation of this issue, I find that the parties managed to work out their issues to their mutual satisfaction. Therefore, I find that the tenants' request for damages arising from the issues with the laundry facility and hot water tank are in retaliation to the landlord's serving the 10 day Notice to End Tenancy and I decline to compensate the tenants' for these inconveniences.

I also decline the tenants' request to recover the cost for damage to their vehicle, which they allege was the deliberate result of a guest of the lower occupant. As pointed out by the landlord the police determined that there was no objective evidence to support the conclusion that the suspected individual was responsible. In the police record submitted the tenants confirm that they did not witness the damage being caused. I find that there is insufficient evidence to support the tenants' request to recover the cost of this damage from the landlord.

I accept that the tenants' had permission from the landlord to change the locks to the rental unit due to the circumstances. However, I do not accept the amount claimed by the tenants. The tenants are attempting to recover a sum which they did not pay. I find that the tenants would be reasonably compensated for the sum of \$50.00. I also acknowledge that there is a discrepancy as to whether the landlord has a key to the rental unit. To resolve this issue I Order that the tenants provide a copy of the key to the landlord.

I reject the evidence of the landlord that there was an attempt to sign the addendum she included with her evidence respecting the payment of the electricity between the upper and lower tenants. The landlord's own evidence confirms that this was to be determined between the occupants and I accept the evidence of the tenants that they paid for the cost of internet and cable while the lower occupant paid for the electricity. I find that the landlord has subsequently attempted to change this agreement which the tenants have opposed.

Section 14 of the *Act* states that a standard term of a tenancy agreement cannot be changed or removed. However, a tenancy agreement may be amended or added to only when both parties agree to the amendment. The landlord's first attempt to change the agreement between the occupants respecting the payment of the electrical costs, in writing, was on April 14, 2008. In this letter the landlord confirms that it was left to the occupants to come to an agreement respecting the electrical costs. The landlord stated in this letter that she felt it would be fair if the tenants contributed to some of this cost.

In another letter dated September 24, 2008 the landlord wrote the tenants again stating that it is now time to sort out the payment of utilities and appears to have allocated a percentage portion to both the occupants. It was on this calculation that the landlord determined that the tenants owed the lower occupant the sum of \$768.56. This subsequently became the basis of the 10 day Notice to End Tenancy.

I find that the landlord failed to establish as part of the tenancy agreement what obligation the tenants had with respect to the payment of electrical cost. I accept the tenants' evidence that an agreement was reached where they paid for the cable and

internet and the other occupant paid for the electricity. This was how the parties conducted business since the tenancy began and it cannot be changed without the mutual agreement of the tenants.

I find that the landlord has no grounds on which to change the terms of the tenancy agreement. The landlord has failed to set out clearly what the tenants' obligation were respecting the payment of the electrical costs and cannot now enforce a term that was never part of the tenancy agreement. I also find that the agreement between the tenants and the lower occupant cannot be change, except if they both mutually agree.

Therefore, the landlord has no grounds on which to claim that the tenants' owed the sum of \$818.56 for the payment of electrical costs and recovery of costs to change the locks on the rental unit. I Order that the landlord is to pay the tenants this sum.

Conclusion:

I grant the tenants' application in part. I find that they have established a total monetary claim for the sum of \$868.56 including the recovery of the \$50.00 filling fee paid for this application. I grant the tenants a monetary Order for the sum of **\$868.56**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated January 11, 2009.

Dispute Resolution Officer