

DECISION

Dispute Codes CNC, MNDC, OLC, RP, RR, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order to have the landlord make repairs; and an order to reduce the rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

At the outset of the hearing the tenants confirmed that they will be moving out of the rental unit and as such there is no longer a need to pursue cancelling the Notice to End Tenancy. I therefore amend the Application to exclude matters relating to ending the tenancy.

As the tenants will no longer be living in the rental unit there is also no longer a need to pursue a rent reduction or to have the landlord make repairs, as such I also amend the tenants' Application to exclude these matters.

At the end of the hearing the tenants noted that their post office box rental receipt had been provided but it was unclear about the terms and duration. As such, I ordered the tenants to provide a copy of their postal box rental agreement to the landlord and to me.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for monies owed or compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on August 1, 2010 as a month to month tenancy for the monthly rent of \$1,200.00 due on the 1st of each month and that the tenants paid a security deposit of \$600.00.

The parties agreed that when the tenancy began the previous tenants had not cleaned the stove and oven prior to the end of their tenancy but that the landlord had arranged for them to come back and clean it. The former tenants never returned. The landlord then offered to clean the oven himself.

The tenants assert that despite this promise the landlord failed to clean the oven. The landlord asserts that he told the tenants to contact him to set up a time and they never did so he did nothing. The tenants testified that as a result of the male tenant's work schedule he could not find the time to clean the oven and because of sensitivities to cleaners the female tenant was not able to clean it either.

The tenants state that as a result from the start of the tenancy until thanksgiving they did not use the oven. They did however use it on thanksgiving which resulted in a fire that they were able to contain prior to any damage to the rental unit was caused. The tenants then hired a cleaning company to clean the oven and were able to use it on a regular basis.

The tenants noted that on December 24, 2010 the oven stopped working but the landlord was away and had not provided the tenants with an emergency contact number and so were unable to report it to the landlord until January 11, 2011. The landlord states he was away from December 24 until January 2, 2011 but that the tenants had his cell phone number which he always carries with him.

The tenants testified that the landlord had provided them with his cell phone number once a long time ago to reach regarding a specific issue and that they were unaware it was their emergency contact number and that the landlord failed to advise them what they should do in the case of an emergency when he was out of town.

The landlord testified that when he received the message from the tenants on January 11, 2011 he contacted them to set up a meeting and that the tenant was unavailable until January 18, 2011; that he spoke to the male tenant on the 17th to confirm their meeting on the 18th and that the tenant never attended the meeting on the 18th.

The tenant states that due to his work schedule he was not able to meet with the landlord until the 18th and that the landlord did drop by on the 17th but only to deliver a letter telling the tenants that their daughter must move out – no discussion about meeting the next day. The tenant states that the landlord was away from the property until 11:00 p.m. on the 18th despite the tenant being home all day waiting for the landlord.

The tenants testified that the oven is still not working and the landlord provided no explanation as to why it had not yet been repaired.

The tenants also contend that since the beginning of the tenancy they had trouble receiving their mail at their rental unit. They state the landlord promised them a key to the community mailbox but that they never received one. The landlord stated that he does not give keys to tenants as they may lose them and he promised he would deliver their mail to them by placing it in the laundry room.

The tenants testified that they never received any of their mail in a timely fashion and as a result were getting calls from their creditors wondering where their payments were

even though they had not received their bills. They further testified that one of the reasons the landlord issued the Notice to End the tenancy was that their daughter was staying with them but that the reason she stayed with them so long was because she was applying for childcare subsidy and when she would not get her mail she lost her window of opportunity to receive subsidy for several months.

As a result the tenants, when they could, would meet the letter carrier at the community mailbox and obtained their mail directly. As this method was also not that reliable the tenants rented a mailbox and did so on November 23, 2010 for a three month period with the rental renewal date set at March 1, 2011.

The tenants are seeking the following compensation:

Description	Amount
Canada Post Rental and mail redirection	\$116.48
Registered mail (this hearing)	\$10.72
Photocopies (this hearing)	\$2.86
Undue Stress	\$500.00
Loss of use of stove/oven – August 1, 2010 – October 16, 2010 (\$20/day)	\$1,500.00
Loss of use of stove/oven – December 24, 2010 – February 26, 2011 (\$20/day)	\$1,120.00
Loss of childcare subsidy for tenants' daughter/granddaughter	\$1,200.00
Total	\$4,450.06

Analysis

As the tenant's daughter and granddaughter were not parties to the tenancy I dismiss the portion of the tenant's application for compensation for any potential losses suffered by a third party.

As the costs for registered mail and photocopies are directly related the tenants' Application for Dispute Resolution they are a cost and choice made by the tenants in to present their case and are not recoverable under the *Act*. I dismiss this portion of the tenant's Application.

Section 27 of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation. As the rental unit is in an area of daily mail delivery it was incumbent upon the landlord to ensure that the tenants had daily mail delivery, regardless of the agreed upon method of that service.

By not providing the tenants with a key to the mailbox, the landlord would have had to have provided the tenants with daily delivery of any mail they would have received, without fail. I find, based on the balance of probabilities that the landlord was not likely

to have ensure the delivery mail on a daily basis and as such, the landlord restricted this service contrary to Section 27.

As a result, I find it reasonable the tenants' rental of a mailbox to be justified and the responsibility of the landlord for payment of those costs.

Section 7 of the *Act* requires a party, who makes a claim for losses against the other party of the tenancy, must take all reasonable steps to minimize the loss. Ultimately, the tenants hired a cleaner to complete the tasks. I also note through the tenants evidence and testimony indicates that their daughter was living with them from the end of August, 2010 until at least January 2011.

The tenants provided no testimony as to why their daughter could not have cleaned the oven prior to October or they did not hire a cleaner earlier. I accept that the landlord failed to meet his obligations to provide a rental unit that was fully clean. However, and despite the tenants' inability to complete the task themselves, I find that the tenants failed to mitigate any losses as required under Section 7 of the *Act*. As a result, I dismiss this portion of their claim.

While Section 32 of the *Act* requires a landlord to maintain the rental unit in a manner that makes it suitable for occupation by a tenant, including the use of a stove, normally a landlord can only be held responsible for failure to meet this obligation once the issue is reported to him.

Section 33 requires a landlord to post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. As the landlord failed to meet this obligation I find the tenants were unable to report the problem with the stove until they were sure he had returned from being out of town.

As such, I find the landlord failed to meet his obligations under Sections 32 and 33 and as a result the tenants lost quiet enjoyment for the full use of the rental unit. Additionally, as the landlord has failed to correct the problem with the stove to this date, I accept the loss suffered by the tenants to be quantified at \$20.00 per day from December 24, 2010 to the end of the tenancy (February 28, 2011) to be reasonable compensation.

Despite the tenants' claim for compensation for undue stress, I find that as the stress is related, primarily, to issues regarding mail and the lack of the use of the stove that the compensation noted above is sufficient compensation in relation to all the matters before me at this hearing.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,506.48** comprised of \$1,340.00 loss of

stove; \$116.48 for mailbox rental and mail redirect; and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 25, 2011.

Residential Tenancy Branch

Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at www.rto.gov.bc.ca for information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
 - How and when to enforce a monetary order:
Fact Sheet RTB-108: Enforcing a Monetary Order
 - How and when to have a decision or order clarified or corrected:
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca