



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, ERP, LRE, MNDC, MNSD, MNR, OLC, PSF, RP, RR, FF

Introduction

This hearing dealt with an application by the tenants to order the landlord to make emergency repairs, suspend or set conditions on the landlord's right to enter, money owed or compensation for damage or loss, cost of emergency repairs, return of the security deposit, order the landlord to comply with the Act, order the landlord to provide services or facilities, make repairs to the unit, allow a tenant to reduce rent for repairs and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

On May 9, 2011 the tenants notified the landlord by email that they would be vacating the rental property due to personal circumstances. On May 11, 2011 the landlord and tenant agreed in writing that the tenants could vacate either June 1 or 9, 2011. A final agreement was then reached on May 14, 2011 whereby the tenants could vacate the rental property May 31, 2011 and not incur any charges for the June 2011 rent.

This tenancy ended May 31, 2011 and it was verified at the start of the hearing that as the tenants have vacated the rental unit, the tenants no longer require an order for the landlord to comply with the Act, to make emergency repairs, to make repairs, provide services or facilities, suspend or set conditions on the landlord's right to enter or to allow a tenant to reduce rent for repairs. Therefore these portions of the tenant's application are hereby dismissed.

The tenants testified that on April 18, 2011 they notified the landlord that the roof was leaking and water coming out the light fixture and then 3 additional spots of the ceiling in the upper bedroom. The tenants stated that as it continued to rain and the roof leak into the electrical fixture, the tenants felt the situation to be very unsafe and had no choice but to move out of this room until the roof and electrical was repaired. The tenants

stated that the landlord did not come and inspect the roof or ceiling damage until late May after the landlord received an order from the city to repair the roof and electrical. The landlord testified that she went to the rental unit on May 6, 13, 19 and 26 to check for leaks and repair the ceiling. As the tenants were not able to use this bedroom for 20 days the tenants are seeking \$103.00 compensation for this loss of use.

The tenants stated that the gas heating bill was very high for the property and they believe the furnace not to be properly working. The tenants stated that the landlord had advised them they could only use the fireplace only if they agreed to have the chimney cleaned at the end of the tenancy. It was clarified for the parties in this hearing that per *Residential Tenancy Policy Guideline 1: The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals*. The tenants maintain that the house was old, not properly insulated and the duct work for the furnace inadequate; the tenants have not submitted a report from a furnace company to support this claim. The tenants stated that the house was often occupied during the day and the temperature kept at 20. The tenants are seeking \$600.00 compensation for their gas bills during the time of their tenancy.

The landlord stated that there was nothing wrong with the furnace and that at one point the tenants had all of the air returns covered.

The tenant stated that he had completed numerous repairs on the landlord's house but that he and the landlord did not have an agreement whereby the landlord would reimburse the tenant for the materials or his time. The verbal agreement between the parties was that it was OK for the tenant to '*make changes to make the house more comfortable*'. The tenant repaired a crack at the front door, a crack in the driveway and laundry room door jamb and feels that an hourly rate of \$50.00 for this work is reasonable. The tenant is seeking \$607.50 compensation for work completed on the house.

The landlord stated that the crack in the driveway the tenant filled with cement was an expansion joint and should never have been filled. The landlord wanted to know why it was not until after the tenancy that the tenant wanted to be reimbursed for his work and light fixtures.

The tenants testified that the washing machine broke and the landlord replaced it in approximately 1 week. This second washing machine then broke after doing damage to the tenant's jeans and sheets and the landlord replaced this machine in a week's time with a brand new machine. The landlord stated that she had advised the tenants that they could take their clothes to the cleaners and she would reimburse them for any expense. The landlord stated that there were rocks in the washing machine and that was what damaged the machine and the tenant's clothes.

The tenants in this application are also seeking return of the \$800.00 security deposit.

The tenant stated that he had applied for dispute resolution when the landlord threatened to keep his security deposit. It was clarified for both parties that the landlord received the tenant's forwarding address when the documents for this application were served and as the tenancy ended May 31, 2011, that is the date from which the landlord has 15 days to return the security deposit or refund it to the tenant.

Analysis

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for compensation for loss of use of the bedroom due to the roof leaking. While the landlord did come and inspect the leak, repairs were not made in a timely manner which resulted in the tenants losing use of this room for 20 days. I hereby grant the tenants a monetary order for \$103.00 compensation for loss.

I do not find that the tenants are entitled to \$600.00 compensation for the gas bills during the time of their tenancy. The gas bills which were high to the tenants do not appear to be exceptionally high considering the daily usage and average temperature. Therefore this portion of the tenant's application is dismissed without leave to reapply.

I do not find that the tenant is entitled to \$607.50 compensation for repairs and materials completed on the landlord's house. The repairs listed by the tenant are minimal and there was no agreement between the parties whereby the landlord would pay the tenant for the work done or reimburse the tenant for materials. Therefore this portion of the tenant's application is dismissed without leave to reapply.

I do not find that the tenants have met the burden of proving they are entitled to compensation for damage to their clothing by the washing machine. At issue is whether or not pebbles ended up in the machine from the tenant's clothes therefore blame cannot be assigned to either party. Therefore this portion of the tenant's application is dismissed without leave to reapply.

As the 15 day time limit has not yet passed for the landlord to make a claim against the tenant's security deposit per section 38 of the *Act*, it is premature to order the landlord to return the security deposit.

I find that the landlord has established a claim for \$103.00 compensation for loss.

The tenant is entitled to recovery of the \$50.00 filing fee.

The balance of the tenant's application has been dismissed.

Conclusion

I find that the tenants have established a monetary claim for **\$103.00**. The tenants are also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$153.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 6, 2011.

Residential Tenancy Branch