



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF and O

Introduction

This application was brought by the tenants on January 20, 2012 seeking a Monetary Order and reduced rent in compensation for damage or losses under the legislation or rental agreement pertaining to loss of quiet enjoyment and loss of use of services or facilities, and recovery of the filing fee for this proceeding.

As a preliminary matter, the landlord questioned if another tenant named on the rental agreement was still resident in the rental unit as he was not named on the application. For clarity, the parties agreed to amend the style of cause to include him.

In addition, in response to an arithmetic error noted in the landlord's response to the application, the tenant has amended his application to reduce a claim for costs pertaining to a non-functioning stove from \$2,771.41 to \$1,897.68.

Issue(s) to be Decided

This matter requires a decision on whether the tenants are entitled to a monetary award for the claims as submitted. Section 7 of the *Act* which makes provisions for one party of a rental agreement to claim against the other for breach of the legislation or rental agreement also requires that the claimant do whatever is reasonable to minimize the damage or loss and the burden of proof lies with the claimants.

Background, Evidence and Analysis

This tenancy began on April 1, 2011 although the tenants were given the keys on March 25, 2011 with no charge for the early start. Rent is \$1,900 per month and the landlord holds security and pet damage deposits of \$950 each, paid on March 21 and March 25, 2011 respectively.

The rental unit is in the Olympic Village, a complex made up of residential rental units, market units which are occupant owned strata properties, and commercial tenants. The residential rental units are represented by the attending property manager on behalf of the City of Vancouver. The present property manager assumed the role after the present tenancy began and did not have first-hand knowledge of some of the matters in dispute.

As a matter of note, the tenants were granted one month's rent relief for April 2011 for reasons that are not entirely clear. The attending tenant believed it was compensation for the landlord having dated and compelled them to begin the tenancy on April 1, 2011 rather than their preferred start date of May 1, 2011 at a rent \$100 higher than agreed. The landlord noted that the application form dated March 21, 2011 indicated the earlier start date and higher rent.

The tenants submitted the following claims on which I find as follows:

Cost incurred because of non-functioning stove - \$1,897.68. The tenants submit this claim on the grounds that they were without a functioning stove for different periods totalling three months, a period the landlord contested as being closer to one month. The tenants based the claim on restaurant dining and easy preparation groceries; however, I find that criteria to be too variable and discretionary to attach an objective evaluation. As a matter of practice, the branch normally finds that the value of a stove to a tenancy varies depending on number of occupants, dependent children, lifestyle, etc., but normally sets a value in the order of 7 to 10 percent.

By way of explanation, the landlord noted that the stove had functioned for the first six months of the tenancy. He acknowledged that there was some delay in having repairs done because, in order to claim under the warranty, he was obliged to deal with the vendor who sold the appliances and it took the vendor's representative five weeks to make the initial analysis. When he declared the unit beyond repair, the landlord provided the tenants with a stove from another unit, but it too malfunctioned resulting in further delay.

I find with some certainty that the tenants were without the stove for approximately two months and award \$150 per month for a total of \$300 on the claim.

Loss of wages - \$850. The tenant stated that the building manager had asked if he could be home when the service personnel came to see the stove and he said that, as a result of them not keeping the appointment of five occasions, he lost \$850 in wages.

I dismiss this claim because it was not essential for the tenant to be home when service technicians were in the unit to examine the stove, and I accept the submission of the landlord that bonded staff would have been available for the purpose. In addition, the tenant stated during discussion on another claim that he does about half of his work at home.

Fitness Centre Access - \$259.92 per month. The tenants make this claim on the grounds that they had been told verbally prior to signing the rental agreement that they were permitted use of the fitness facility in the complex at no charge. The amount claimed is based on membership in a comparable commercial facility.

While the verbal representation predated the present property manager, he noted that all print material promoting the complex states that the fitness facility is available at no charge to "market units," previously defined herein as the strata titled units. The property manager further noted that there is no specific reference to fitness facilities in the rental agreement and the general expression, "use of amenities," referred to bicycle storage and common lounge. The landlord stated that the tenants' assertion that all other tenants in the building have free use was mistaken and referred to an email response to the tenants' enquiry dated 4/3/11 that, "you would need to pay to join the health club."

In the absence of written proof to the contrary, I must find that the tenants have not met the burden of proof on this claim and it is dismissed.

Radiant cooling - \$100. As with the use of the fitness facility, the landlord noted that the representations referring to radiant cooling were limited to the market units. I find that the misunderstanding arose from a lack of due diligence in clarifying the rental agreement. The claim is dismissed.

Loss of quiet enjoyment - \$1,250. This claim arises from a period of construction of five months in the commercial rental units in the building. The landlord stated that the commercial part of the complex is managed by an unrelated company and that he had no advance notice of the work.

The landlord noted that immediately on receiving complaints of the construction noise, his staff immediately investigated and notified their tenants that work was expected to continue for five months. They contacted the city and were advised that bylaws permitted the work from 7:30 a.m. to 8 p.m. and gave a contact number to report violations. The tenant submitted a video recording and equipment showing noise in the rental unit reaching 80 decibels.

Residential Tenancy Guidelines note that it not necessary for the landlord to directly impinge on the tenants in order for there to be a finding of loss of quiet enjoyment; the landlord may neither stand idly by while a loss within the landlord's control is allowed to continue. In the present matter, I find that the landlord exercised what little power he had to address the issue and he noted that the disturbance was intermittent. The disturbance to the applicant tenants must have been somewhat limited as both were said to be full time students with one holding a full time job and the other holding two part time jobs.

I find that some degree of such disturbance is inevitable in an urban setting, and I accept the landlord's submission that he would have relieved the tenants of their obligations under the fixed term agreement if they had proposed a mutual agreement to end the tenancy which would have represented an attempt to minimize their loss.

Therefore, I make no award on the claim.

Filing fee - \$100. Having found partial merit in the application, I find that the tenants are entitled to recover one-half of the filing fee for this proceeding from the tenants and award \$50 for that purpose.

Thus in total, I find that the tenants are entitled to compensation of \$300 for the loss of use of the stove for a period of two months and to \$50 to recover one-half of the filing fee for this proceeding.

As authorized under section 72(2)(a) of the *Act*, I hereby order that the tenants may recover the \$350 found owed to them herein by withholding that amount from the next rent due.

Conclusion

The tenants are entitled to monetary compensation totalling \$350 and may withhold that amount from the next due rent payment.

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 10, 2012.

Residential Tenancy Branch