



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNSD MNDC FF

For the tenants: ERP RP RPP LRE OPT CNR MNR MNDC OLC RR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants applied to cancel a Notice to End Tenancy for Cause for Unpaid Rent or Utilities, for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to order the landlords to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health and safety reasons, to make repairs to the unit, site or property, to return the tenants’ personal property, to suspend or set conditions on the landlords’ right to enter the rental unit, to obtain an order of possession of the rental unit or site, to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The male tenant and the landlords attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The parties confirmed that they were served with the evidence package from the other party and had the opportunity to review the evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing, the male tenant requested to withdraw portions of the tenants' application. As the tenants are no longer residing in the rental unit, the male tenant requested to withdraw their request to cancel the Notice to End Tenancy, and their request directing the landlords to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to suspend or set conditions on the landlords' right to enter the rental unit, to obtain an order of possession of the rental unit or site, and to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The request of the tenant was granted, and as a result of the above, the hearing proceeding with consideration of the tenants' application for a request for a monetary order for cost of emergency repairs and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the landlords to return the tenants' personal property, and to recover the filing fee.

The landlords, in turn, withdrew their application for an order of possession as they already had possession of the rental unit by the time of the hearing.

The landlords requested to increase their monetary claim to include rent owed for November 2012, however, their request was denied as that claim would be premature given that the hearing date was October 10, 2012.

Settlement Agreement

Section 63 of the *Act*, states:

Opportunity to settle dispute

- 63** (1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.
- (2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

During the hearing, a mutual agreement between the parties was reached specifically regarding the return of the tenants' personal property. The mutual agreement of the parties is as follows:

1. The tenants will contact the landlords to arrange a time to attend the rental unit for the purposes of the return of the tenants' personal items including a coffee table which the tenant states is located in the outside locked storage area.
2. The landlords will permit the tenants to attend the rental unit and unlock the outside storage area and remove the tenants' lock and remove only the personal items that belong to the tenants.
3. The landlords will remove the tenants' lock from the rental unit, and agree to return the lock to the tenants when they arrive to pick up their personal property.

Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent or utilities or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords authorized to keep all or part of the security deposit?
- Are the tenants entitled to a monetary order for the cost of emergency repairs or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2012. According to the written tenancy agreement provided as evidence prior to the hearing, the tenancy was a fixed term tenancy that was to expire on May 31, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was paid by the tenants at the start of the tenancy.

The landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") dated September 2, 2012 and with an effective date of September 12, 2012. The tenants disputed the Notice on September 7, 2012, however, withdrew their request to cancel the Notice during the hearing. The male tenant confirmed that rent for September or October has not been paid. The tenant stated that rent was not paid due to repairs not being completed by the landlords. The landlords disputed the tenant's testimony by stating that they were not given notice by the tenants of their concerns.

Tenants' application

The tenants are seeking \$450.00. The tenants' application did not provide details as to what that amount was comprised of. During the hearing, the male tenant testified that \$450.00 was comprised of the following:

Materials required to complete work needed in the rental unit	\$70.00
Labour to complete work calculated at 11 hours @ \$30.00 per hour	\$330.00
Spoiled food due to faulty refrigerator	\$50.00
TOTAL	\$450.00

The parties agree that the landlords attended the rental unit in either June or July to perform a drywall repair. The tenant did not provide specific details in his claim regarding what work he allegedly performed. The tenant testified that he created a document called "Rent Receipt for September, 2012". In that document, the tenants claim that \$400.00 cash was received on September 1, 2012 and \$400.00 was received in June 2012 as the original security deposit and lists the work he allegedly completed including:

- "1 hour repair to bifold
- 1 hour repair of cupboards.
- 1 hour to rear door lock and sweep and weatherstrip to seal rear door.
- 2 hour repair to dryer vent to seal and fasten.
- 1 hour on the drywall in the bathroom.
- 3 hours mouse proofing house.
- 2 hour insect proofing the interior from the exterior foundation..."

[reproduced as written]

During the hearing, however, the male tenant testified that rent for September or October 2012 has not been paid, which was confirmed by the landlords.

The tenant stated that he verbally advised the landlords in June 2012 that work was required in the rental unit. The tenant confirmed that he did not notify the landlords in writing during the tenancy. The landlords responded to the tenant's testimony by stating that they were denied entry when they arrived to fix some holes. The tenant denied refusing the landlords entry. The tenant confirmed that he did not receive prior approval

from the landlord for the work he performed in the rental unit and is seeking compensation for that work.

The tenant claimed that the refrigerator in the rental unit was not working correctly and had not been repaired and resulted in the loss of food valued at \$50.00. The landlords disputed that the tenants complained about the refrigerator until approximately August 13, 2012. Within the same day, the landlords testified that they paid \$1,200.00 for a brand new refrigerator that was delivered about one week later. The landlords stated that their previous tenants had never complained about the refrigerator in the fourteen months they were in the rental unit. The male tenant confirmed that the landlords provided a new refrigerator that worked properly.

Landlords' application

The landlords are seeking \$1,600.00 comprised of \$800.00 rent owed for the months of September and October, 2012 and authorization to retain the security deposit towards rent owed.

The parties agree that the tenants vacated the rental unit on September 28, 2012, however, the landlords were unsure whether the tenants were actually going to vacate in September and were unable to rent the rental unit for October 2012 as a result. The landlords stated they did not receive the \$800.00 rent for September 2012, and suffered a loss for rent for October 2012 in the amount of \$800.00 when the tenants did not vacate by the effective date on the Notice. The rental unit remains unoccupied.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Tenants' claim for materials, labour and spoiled food –

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenant provided a list of items he worked on in the home, but failed to provide evidence that the landlords were notified of the work. The landlords testified that they were never presented with the repairs required by the landlord until after being submitted with the invoice created by the tenant. The tenant filed for the cost of emergency repairs and for money owed or compensation for damage or loss under the *Act*.

Section 33 of the *Act* describes emergency repairs and states:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

As a result of the above, **I find** that the repairs the tenant alleges he performed according to the list he created and submitted as evidence, were **not** emergency repairs. Furthermore, **I find** that the tenant has failed to meet the test for damages or loss. The tenant has not proven that the landlords breached the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** the tenant's claim in full due to insufficient evidence, without leave to reapply.

Landlords' claim for unpaid rent and loss of rent – A fixed term tenancy began on June 1, 2012 and was to expire on May 31, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. The tenant failed to pay rent for September and October 2012. Section 26 of the *Act* requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, **I find** the tenants breached section 26 of the *Act* and **I find** that the tenants owe rent in the amount of \$800.00 for September 2012.

The tenant testified that he vacated the rental unit on September 28, 2012. **I find** that the landlords' suffered a loss of rent for October 2012 as the tenant vacated the rental unit two days before the end of the month and they were unable to secure a new tenant in two days. Given the above, **I find** the landlords' have established a monetary claim in the amount of \$1,600.00 comprised of \$800.00 rent owed for September, 2012 and loss of rent for October 2012 in the amount of \$800.00.

I find the tenant's application did not have merit. Therefore, **I do not grant** the tenant the recovery of the filing fee.

I find the landlords' application did have merit. Therefore, **I grant** the landlords recovery of the filing fee in the amount of **\$50.00**.

The tenants' security deposit of \$400.00 has accrued no interest since May 2012, which the landlords continue to hold.

I find that the landlord has established a total monetary claim of **\$1,650.00** consisting of \$1,600.00 in unpaid rent and loss of rent and the \$50.00 filing fee. **I authorize** the landlords to retain the full security deposit of \$400.00 in partial satisfaction of the claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$1,250.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss the tenant's application in full due to insufficient evidence, without leave to reapply.

I do not grant the tenant recovery of the filing fee.

I find the landlords have established a total monetary claim of \$1,650.00. I authorize the landlords to retain the full security deposit of \$400.00 in partial satisfaction of the claim, and I grant the landlords a monetary order for the balance owing in the amount of \$1,250.00.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 12, 2012

Residential Tenancy Branch