



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, O

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession or unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that the female landlord (witnessed by the male landlord) handed the tenant a 10 Day Notice on November 20, 2012. The landlords confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on November 26, 2012. I am satisfied that the above documents were served to one another in accordance with the *Act*.

The landlords testified that they sent the tenant a copy of their amended dispute resolution hearing package by registered mail on December 3, 2012. They provided the Canada Post Tracking Number to confirm this registered mailing. Although the tenant testified that he had not received the landlords' dispute resolution hearing package and had not been notified by Canada Post that there was a registered mail package for him,

the Canada Post Tracking System indicated that the landlords' registered mail hearing package was successfully delivered to the tenant on December 4, 2012. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed to have been served with a copy of the landlords' dispute resolution hearing package by December 8, 2012, the fifth day after its mailing.

The tenant testified that he sent copies of his written and photographic evidence, including eleven pages of photographs with his dispute resolution hearing package. The landlords testified that they not received this evidence from the tenant. The Residential Tenancy Branch (the RTB) has not received this evidence from the tenant. As I am not satisfied that the tenant has served this evidence to either the RTB or the landlords for the purposes of this hearing, I have not considered this evidence in reaching my decision.

The tenant testified that there have been five applications for dispute resolution regarding this tenancy since it commenced on March 1, 2012. He said that this was the first application that has led to an actual hearing. He said that he was anticipating that the evidence submitted with the previous applications would be taken into account in the current hearing. He provided no other information with respect to the previous applications and had no dates or file numbers with which to reference any of the previous applications. In the absence of any specific information regarding any of these previous applications, I advised the parties that I would only be taking into account the written evidence properly served to one another in the context of the current applications from the parties. I noted that the Notice of Hearing documents provided to the parties at the time of their most recent applications outlined the need to ensure that the other party and the RTB received any evidence with which they intended to rely at this hearing.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and utilities? Are the landlords entitled to a monetary award for unpaid rent and utilities? Is the tenant entitled to a monetary award for emergency repairs conducted or for losses in the value of this tenancy? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

This periodic tenancy for a two-level rental property began on March 1, 2012. Monthly rent for this entire rental property is set at \$1,650.00, payable in advance on the first of each month. The tenant is responsible for the water bill for this rental property. The

landlords continue to hold the tenant's \$825.00 security deposit paid on February 19, 2012.

The landlords amended their initial application for a monetary award of \$2,930.00, the amount they claimed as owing in their 10 Day Notice, to \$6,470.19. This amended amount included the following:

Item	Amount
Unpaid Rent Owing as of November 20, 2012	\$2,930.00
Unpaid December 2012 Rent	1,650.00
Unpaid January 2013 Rent	1,650.00
Unpaid Water Bill	240.19
Total Amended Monetary Award Requested by Landlords	\$6,470.89

The tenant applied for a monetary award of \$4,999.99. In a two page attachment to his application for dispute resolution, the tenant listed many items, including the following which he noted far exceeded the amount that he was claiming through this action:

Item	Amount
Loss of Rental for Basement (3 months @ \$800.00 per month = \$2,400.00)	\$2,400.00
Loss of Heat and Gas from Broken Windows (\$55.00 x 10 months = \$550.00)	550.00
Loss of Use of Stove in Basement for Tenant (\$100.00 x 10 months = \$1,000.00)	1,000.00
Loss of Schooling Paid for Daughter (\$330.00 @ 4 months = \$1,320.00)	1,320.00
Loss of Improvement to Back Driveway	1,040.00
Loss of Deck Built in Back Yard	1,340.00
Loss of New Fuse Box installed by tenant	400.00
Loss of Store Building Products	800.00
Loss of Washer and Dryer (\$60.00 x 10 months = \$600.00)	600.00
Cost of Moving House and Store Products	2,200.00
Cost of Loss of Store Income due to Move	1,800.00
Cost of Stationary Playground	1,900.00
Total of Above Items	\$15,350.00

In his attachment to his application for dispute resolution, the tenant noted that he was only seeking a monetary award of \$4,999.99 in his application. He stated that he intended to undertake legal action against the landlord for an additional \$10,000.00 plus. At the hearing, the tenant testified that he had declared bankruptcy recently and that he had not been living in the rental unit for some time. He confirmed that he had not yet yielded vacant possession of the rental property to the landlords as some of his belongings remained on the premises. The female landlord testified that the tenant has continued to stay at the rental property and had not yet vacated the premises.

The tenant confirmed that he has not made any further payments to the landlords since the landlords issued their 10 Day Notice. He did not object to the landlords' application for an end to this tenancy and the issuance of an Order of Possession.

Analysis – Order of Possession

Based on the evidence before me, I am satisfied that the tenant has not paid anything towards the \$2,930.00 identified as owing in the landlords' 10 Day Notice. As the tenant has not paid anything towards this tenancy for some time, I issue a 2 Day Order of Possession to the landlords.

Analysis – Landlords' Application for a Monetary Order

Based on the evidence presented by the parties, I find that the landlords are entitled to a monetary award of \$2,930.00 for unpaid rent owing as of November 20, 2012, plus an additional \$1,650.00 for each of December 2012 and January 2013.

I am not satisfied that the landlords have supplied sufficient written evidence to substantiate their claim of \$240.19 for an unpaid water utility bill. Their only written evidence with respect to this part of their claim was a handwritten notation on their amended application for dispute resolution in which they asserted that they had incurred costs of \$240.19 for a municipal water bill. I dismiss the landlords' claim for an unpaid water utility bill of \$240.19 owing as of December 3, 2012, without leave to reapply.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in partial satisfaction of the monetary award granted in their favour.

Analysis – Tenant's Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, neither party provided adequate sworn oral testimony, written or photographic evidence to assist in my consideration of the tenants' claim for the tenant's application for a sizeable monetary award. Neither party provided copies of a joint move-in condition inspection report, nor did anyone other than the parties themselves attend the hearing to attest to any of the items listed as requiring expenditures by the tenant.

The absence of any receipts, referenced by the tenant in the attachment to his application for dispute resolution, acts as a serious obstacle to providing compensation for many of the items claimed by the tenant. Although he claimed to have provided receipts to support his application which were not received by the RTB and the landlords, the tenant testified that he had lost much of his paperwork associated with his claim.

Despite the absence of receipts demonstrating actual losses incurred by the tenant, I find that there is some evidence that the tenant did not receive the value in his tenancy that he expected to receive when he entered into this tenancy agreement. The landlords provided oral and written evidence to confirm that they did not provide the tenant with all of the services and facilities that he was supposed to have received. For example, the landlords confirmed the tenant's claim that they did not fulfill their commitment to provide the tenant with a stove in the basement of this rental property. The landlords also confirmed that they did not leave the tenant with the same new stove that was in the upper rental unit when he first viewed the rental property. The tenant entered undisputed written evidence that the landlords replaced the new stove he viewed initially with a less satisfactory used stove. The landlords also confirmed that they never ensured that the dishwasher for the upstairs accommodations was installed and functional. The female landlord said that the tenant told the landlords that he would install the dishwasher himself and that they offered him \$50.00 to arrange for this installation. The landlords maintained that they did not hear anything further from the tenant about this issue or any of the other deficiencies he listed in his application for a monetary award until he had discontinued paying his monthly rent.

The tenant apparently moved a live-in nanny into this basement unit. He claimed that she was unable to continue living in that suite after the landlords initially delayed repairs to flooding problems in the basement and later failed to complete satisfactory repairs to

that portion of the rental unit. The tenant testified that this live-in nanny slept on a couch in the tenant's portion of the premises for many months until she moved out in November 2012.

Based on the evidence provided by the parties, I find that the tenant is entitled to some reductions in monthly rent during the course of this tenancy for services and facilities that the landlord committed to provide as part of this tenancy. I find that the monthly loss in value of this tenancy was as follows:

Item	Amount
Failure to Provide a Stove in the Basement (\$50.00 x 11 months = \$550.00)	\$550.00
Failure to Provide the Stove the Landlords Committed to Provide for the Upper Portion of the Rental Premises (\$25.00 x 11 months = \$275.00)	275.00
Failure to Provide a Functioning Dishwasher (\$20.00 x 11 months = \$220.00)	220.00
Failure to Repair Broken Windows (\$10.00 x 10 months = \$100.00)	100.00
Total of Tenant's Monetary Award for the Above Items	\$1,145.00

I am not satisfied that the tenant has demonstrated that he incurred actual losses as a result of the failure of the landlords to repair the basement suite promptly or adequately. However, as I do accept that the tenant encountered some inconvenience because his nanny had to live in the upstairs portion of this property for many months instead of the nanny suite below, I allow the tenant a further monetary award of \$500.00 to reflect this inconvenience.

I dismiss the remainder of the tenant's claim for a monetary award without leave to reapply. I do so as the tenant has not provided adequate evidence to demonstrate that he was given approval to undertake renovations and repairs at the landlords' expense, nor has he supplied receipts or invoices to document his expenses.

As both parties have been partially successful in their applications, I find they both bear the costs of the filing fees for their applications.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms which allows the landlords to recover unpaid rent less the amounts of the tenant's entitlement to a monetary award:

Item	Amount
Unpaid Rent Owing as of November 20, 2012	\$2,930.00
Unpaid Rent December 2012	1,650.00
Unpaid Rent January 2013	1,650.00
Less Failure to Provide a Stove in the Basement (\$50.00 x 11 months = \$550.00)	-550.00
Less Failure to Provide the Stove the Landlords Committed to Provide for the Upper Portion of the Rental Premises (\$25.00 x 11 months = \$275.00)	-275.00
Less Failure to Provide a Functioning Dishwasher (\$20.00 x 11 months = \$220.00)	-220.00
Less Failure to Repair Broken Windows (\$10.00 x 10 months = \$100.00)	-100.00
Less Inconvenience Resulting from Loss of Use of Basement Portion of Rental Premises	-500.00
Less Security Deposit	-825.00
Total of Landlords' Monetary Award	\$3,760.00

I also order that the landlords retain the tenant's security deposit.

The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the applications for monetary awards from both parties without leave to reapply.

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: January 07, 2013

Residential Tenancy Branch

