



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application filed December 6 and amended December 7, 2012: CNR; MNDC; MNSD; FF

Landlords' application filed December 19, 2012: OPR; OPB; MNR; MNDC; MNSD; MND; FF; O

Introduction

This Hearing was convened on January 10, 2013, to consider cross applications. The Tenants sought to cancel a Notice to End Tenancy for Unpaid Rent; compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; and to recover the cost of the filing fee from the Landlords.

The Landlords sought an Order of Possession for unpaid rent and breach of the tenancy agreement; a Monetary Order for damages, unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearings.

At outset of the Hearing on January 10, 2013, it was determined that the tenancy had ended and therefore the Tenants' application to cancel the Notice to End Tenancy and the Landlords' application for an Order of Possession were dismissed. The parties' other issues could not be fully heard within the time allotted for the Hearing and therefore, the Hearing was adjourned to March 20, 2013. An Interim Decision was provided on January 28, 2013, which should be read in conjunction with this Decision.

Preliminary matters

The Landlords' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicants to provide details in the "Details of

Dispute Resolution” section. No details were provided. Therefore this portion of their application is dismissed.

Issues to be Decided

- Are the Landlords entitled to a monetary award for damages, unpaid rent and loss of revenue?
- Are the Tenants entitled to compensation for damage or loss and return of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The tenancy agreement was a one year lease, from September 1, 2012 to August, 2013. The Tenants moved into the rental unit on September 6, 2012 and paid reduced rent in the amount of \$2,000.00 for the month of September. The Tenants moved out of the rental unit on or about December 24, 2012. Monthly rent was \$2,400.00, not including utilities. The tenancy agreement indicates that the security deposit is \$1,275.00; however, the Tenants testified that they paid a security deposit in the amount of \$1,280.00. The Landlords stated that the Tenants only had \$20 bills to pay the security deposit, and that \$1,275.00 went towards the security deposit, with the remaining \$5.00 going towards rent.

The rental unit is a house with a suite on the ground floor. The Landlords' son occupied the ground floor suite. The Tenants lived upstairs.

The Tenants gave the following testimony and documentary evidence:

The Tenants stated that the Landlords entered into a one year term tenancy agreement with the Tenants, knowing that the rental unit's mortgage holder had initiated foreclosure proceedings. They stated that throughout the months of September and October, realtors came to show the rental unit often without giving due notice. The Tenants said that there were more than 20 viewings and that representatives from the bank were at the rental unit every other day.

The Tenants stated that the Landlords disturbed their peace and quiet by installing a kitchen and a door in the lower suite for the Landlords' son's use.

The Tenants stated that they were responsible for paying 80% of the utilities for the rental unit and the Landlord's son was responsible for the remaining 20%. The Tenants stated that they offered to pay 100% of the utilities if the Landlords allowed them to deduct the Landlords' son's portion from rent owed. In addition, the Tenants stated that

they offered to pay a water bill that was outstanding prior to the start of the tenancy and deduct that amount from rent as well. The Tenants paid \$1,654.85 for November's rent, calculated as follows:

November, 2012 rent	\$2,400.00
Less outstanding water bill prior to September	-\$655.77
Less Landlord's son's share of current water bill	-\$36.56
Less Landlord's son's share of current hydro bill	-\$25.87
Less Landlord's son's share of current gas bill	<u>-\$26.95</u>
Total rent after deductions	\$1,654.85

The Tenants testified that they did not pay the outstanding utility bills because the Landlords would not give them an "official statement" confirming the agreement and did not answer the Tenant's request for confirmation of the agreement. The Tenants were concerned that the Landlords would insist on full rent payment for November even after the Tenants had paid the utilities.

The Tenants stated that in November, 2012, they received a letter from the rental unit's mortgage holder (the "Bank") telling them that the Bank was seeking a Court Order giving the Bank conduct of sale of the rental unit, and advising them that if the Court granted their application the Tenants would have to move out by 5:00 p.m., January 7, 2013. A copy of the letter, dated November 19, 2012, and a copy of the Notice of Application to the Court were provided in evidence.

On November 22, 2012, the Landlords sent the Tenants a letter advising that the property was possibly sold and that the Landlords were giving formal notice terminating the tenancy effective January 15, 2013. A copy of this letter was provided in evidence.

The Tenants stated that they did not know to whom they should pay rent when it was due on December 1, 2012. They did not pay rent for December, 2012. The Landlords issued a 10 Day Notice to End Tenancy on December 4, 2012.

The Tenants stated that they attempted to reach an agreement to end the tenancy with the Landlords. The Tenants testified that they offered to pay December rent to the Landlords in the amount of \$2,400.00 less \$1,000.00 compensation pursuant to a term in the addendum to the tenancy agreement; however, the Landlords would not agree to provide the promised compensation. The Landlords also demanded that the Tenants pay prorated rent to January 15, 2013.

The Tenants stated that in December the Landlords turned off the hot water tank, heat and electricity and were harassing the Tenants with e-mails threatening to report them

to Immigration Services and have them sent “home”. The Tenants provided copies of text messages to and from the Landlords in evidence. The Tenants stated that they didn’t have electricity for lights for about 1 ½ hours and had no heat for 3 or 4 days. The Tenants called the police, who attended and told the Landlords to turn the heat and electricity back on. The Tenants testified that the Landlords refused to allow the Tenants access to laundry for the remainder of the tenancy.

The Tenants testified that towards the end of the tenancy, the Landlords’ son harassed them by playing his drums and music very loudly for long periods of time. The Tenants provided digital evidence including video/audio recordings of loud drumming spanning approximately 1 ½ hours, and loud music played after 11:00 p.m. at night.

On December 12, 2012, the Bank’s application was made and granted. The Order for Approval of Sale was filed in Supreme Court on December 14, 2012, and title to the rental unit was transferred from the Landlords to the new owners. A copy of the Order for Approval of Sale was provided in evidence.

On December 17, 2012, the male Tenant and the female Landlord signed a Mutual Agreement to end the tenancy effective December 21, 2012. A copy of the agreement was provided in evidence. The male Tenant stated that he didn’t think that the agreement was enforceable until the female Tenant signed it.

On December 20, 2012, the Bank sent the Tenants an e-mail indicating that they were entitled to stay in the property until January 7, 2013, pursuant to the Court Order. A copy of the e-mail was provided in evidence.

The Tenants stated that the Landlords called the police on December 23, 2012, and asked the police to remove the Tenants because they were trespassing. The police arrived at the rental unit and advised the Tenants that they had to move because they had signed the Mutual Agreement to End the tenancy, so the Tenants moved out.

The Tenants seek a monetary award, calculated as follows:

Compensation for loss of peaceful enjoyment and loss of facilities	\$2,400.00
Double the amount of the security deposit (\$1,280.00 x 2)	<u>\$2,560.00</u>
Total claim	\$4,960.00

The Tenants stated that they agreed that they owe the Landlord a total of \$900.00 for unpaid utilities up to and including December 24, 2012.

The Landlords gave the following testimony and documentary evidence:

The Landlords disputed all of the Tenants' claims. They stated that rent at the beginning of the tenancy was \$2,550.00, but that they agreed to lower it to \$2,400.00 if the Tenants agreed to take care of the gardening. The Landlords stated that this agreement was included in the addendum to the tenancy agreement which was provided in evidence. The Landlords stated that the Tenants did not do any gardening in December, 2012, and therefore they seek unpaid rent in the amount of \$2,550.00 for the month of December.

The Landlords stated that there were only 8 proposed viewings of the rental unit, two of which were cancelled prior to the viewing date. The Landlords stated that on each occasion the Tenants were provided notice via e-mail of when the viewings would occur.

The Landlords said that it only took a few hours to install the door and that the Tenants never complained about any noise. The Landlords testified that there was already a kitchen in the lower suite, so they just had to install a fridge, stove, and sink.

The Landlords stated that the Tenants did not pay the utilities in November, 2012, and that as of December 20, 2012, the total owed for utilities was \$965.63. The Landlords testified that \$965.63 was paid out of the sale proceeds.

The Landlords said that the Tenants did not dispute that they owed rent for December. The Tenants sent an e-mail stating that they were holding rent in "escrow", because they wanted to be sure to pay it to the correct person. The Landlords stated that they were not bankrupt and that the Tenants owe the rent to the Landlords.

The Landlords stated that they told the Tenants that the house was for sale, before the tenancy agreement was signed and therefore the Tenants were aware that they might have to move.

The Landlords stated that they gave the Tenants an opportunity to inspect the rental unit at the end of the tenancy, but the Tenants did not attend for the inspection because they did not recognize the Landlords as "landlords". The Landlords stated that they did the move-out inspection on their own. The Landlords provided photocopies of photographs of the rental property and the garden in evidence. The Landlords also provided a letter dated December 27, 2012, signed by two witnesses stating:

“In our opinion, the residence was insufficiently clean to rent it or hand it over to new owners. Nothing appeared to be broken but the residence would require several hours of cleaning services to bring it back to its previous standard.”

The Landlords agreed that their son played the drums during the daytime, but testified that their son had an agreement with the Tenants that he could practice his drums in the afternoons.

The Landlords stated that the Tenants caused water damage to the ceiling of their son's suite by ripping a shower head from the wall.

The Landlords submitted that I do not have jurisdiction to make findings with respect to criminal harassment and therefore I could not award damages for that portion of the Tenants' claim.

The Landlords stated that there were two hot water heaters at the rental property. One was a regular hot water tank and the other provided instant hot water. The Landlords stated that the instant hot water tank was broken for a few days, but the regular one still worked.

The Landlords stated that they realized they had made a mistake and only through the breaker which turned the electricity off for five minutes. They stated that in any case the Tenants could have heated the rental unit with their gas fire place, which heated 3,000+ square feet of space.

The Landlords' Application indicates that they seek a monetary award, calculated as follows:

Unpaid rent for November, 2012	\$750.00
Unpaid rent for December, 2012	\$2,550.00
Unpaid rent for January, 2013	\$2,550.00
Cost to repair ceiling in lower suite	\$1,500.00
Cleaning costs	\$500.00
Unpaid water bill	<u>\$500.00</u>
Total claim	\$8,925.00

During the reconvened Hearing, the Landlords amended their monetary claim, as follows:

Unpaid rent for November, 2012	\$965.63
Cost to repair ceiling in lower suite caused by flood	\$500.00
Cost to clean the rental unit (2 days)	\$500.00
Unpaid rent for December, 2012	<u>\$2,550.00</u>
Total claim	\$4,515.63

The Tenants gave the following reply:

The Tenants disputed the Landlords' claim in its entirety, with the exception that they owed \$900.00 for utilities.

The Tenants stated that the shower head came off but was not ripped out by the Tenants. They said that there was previous water damage to the wall from a prior water leak. The Tenants stated that they were not given the opportunity to do the inspection with the Landlord and therefore have not seen any purported water damage, or the opportunity to repair any damage themselves.

Analysis

The onus is on each party to prove their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Regarding the Tenants' Application:

The parties disagreed with respect to the amount of the security deposit paid by the Tenants. The tenancy agreement indicates that the security deposit was \$1,275.00. Based on the balance of probabilities, I find that the security deposit was \$1,275.00.

The security deposit is held in a form of trust by the Landlords for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and **after receipt of a tenant's forwarding address in writing**, a landlord has **15 days** to either:

1. **repay the security deposit** in full, together with any accrued interest; **or**
2. **make an application** for dispute resolution claiming against the security deposit.
(emphasis added)

Section 38(6) of the Act provides that if the landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, the Tenants provided no evidence of when they provided the Landlords with written notification of their forwarding address. Therefore I find that the Landlords were provided with the Tenants' forwarding address in writing on January 9, 2013, when the Landlords were served with the Tenants' Application for Dispute Resolution. The Landlords applied against the security deposit prior to being served with the Tenants' Application for Dispute Resolution. Therefore, the Tenants' application for double the amount of the security deposit is dismissed.

Copies of Sections 35, 36 and 38 of the Act and Part 3 of the regulation are enclosed with this Decision. The Landlords provided no evidence that they provided the Tenants with written notification of an inspection opportunity at the end of the tenancy, or that they gave the Tenants a Notice of Final Opportunity to inspect the rental unit, as required in Part 3 of the regulation. Therefore, I find that the Landlords extinguished their right to claim against the security deposit for damages under the provisions of Section 36(2) of the Act. However, the Landlord may still set off the security deposit for unpaid rent under the provisions of Section 72 of the Act. Therefore, I will deal with the disposition of the security deposit later in this Decision.

Use of the laundry facilities was included in the tenancy agreement. Section 27 of the Act provides that a landlord may not terminate or restrict non-essential services or facilities without providing the tenant 30 days' written notice in the approved form. The landlord must also give the tenant compensation by reducing the rent in an amount that is equivalent to the reduction in the value of the tenancy. Based on the testimony and documentary evidence provided, I find that the Landlords did not comply with Section 27 of the Act and that the value of the tenancy was reduced. I award the Tenants compensation in the amount of **\$100.00** for the loss of laundry facilities.

Based on the large volume of documentary evidence and the testimony of the parties, I find that the Landlords failed to comply with Section 28 of the Act. Section 28 of the Act protects the Tenants' right to quiet enjoyment of the rental unit. I find that the Landlords

did not provide the Tenants with quiet enjoyment of the rental unit. I find that they unreasonably disturbed the Tenants by:

- failing to provide due notice, as required under Section 29 of the Act, that the rental unit was being viewed by potential buyers;
- sending intimidating e-mails threatening to call immigration and have the Tenants deported;
- turning off essential services; and
- enlisting the aid of police to convince the Tenants to move out on December 23, 2012, without telling the police the whole of the truth with respect to the Court ordered sale and Court order that the Tenants may vacate by January 7, 2013.

Therefore, I find that the value of the tenancy was severely reduced for the months of November and December, 2012. I order rent abatement in the amount of \$1,200.00 per month after October 31, 2012. The Tenants paid \$1,654.85 for November rent, and therefore I award the Tenants the difference in the amount of **\$454.85**.

The addendum to the tenancy agreement clearly provides that the Tenants are entitled to compensation in the amount of \$1,000.00 if the tenancy ends prior to the end of the term of the lease. I hereby award the Tenants **\$1,000.00** in compensation pursuant to the terms of the tenancy agreement.

Regarding the Landlords' Application:

The Landlords did not provide sufficient documentary evidence to support their claim of unpaid utilities in the amount of \$965.63. They did not provide copies of utility bills totaling that amount, or a copy of the statement of adjustments for the sale of the rental unit. However, the Tenants did not dispute that they owe the Landlords \$900.00 in unpaid utilities. Therefore I allow this portion of the Landlord's claim in the amount of **\$900.00**.

I have found that the Tenant overpaid rent for the month of November and therefore, the Landlords' claim for unpaid rent for November, 2012, is dismissed.

I find that the tenancy with the Landlords **ended on December 14, 2012**, as a result of a Court ordered sale. Therefore, I find that the Landlords had no standing as "landlords" to enter into a mutual agreement to end the tenancy on December 17, 2012, and the agreement is not a valid agreement.

I have found that rent for the month of December, 2012, was \$1,200.00 and that the tenancy ended on December 14, 2012. Therefore I allow the Landlords' claim for unpaid rent for December in the amount of **\$541.94** (\$1,200.00 x 14 days / 31 days).

I find that the Landlords provided insufficient evidence to support their claim for the cost of damages and the cost of cleaning the rental unit. Therefore this portion of their application is dismissed.

The Landlords have established a total monetary award of **\$1,441.94**. Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award, leaving a balance of **\$166.94** owed by the Tenants (\$1,441.94 - \$1,275.00).

Set-off of Awards:

Both parties have been partially successful in their claims, and I order that they each bear the cost of their own applications.

The Tenants have established a total monetary award of **\$1,554.85**.

The Landlords have established a total monetary award of **\$166.94**, after setting off the security deposit.

I hereby set off the Landlords' monetary award against the Tenants' monetary award and provide the Tenants with a Monetary Order in the amount of **\$1,387.91** for service upon the Landlords.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,387.91** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (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: April 15, 2013

Residential Tenancy Branch

Condition inspection: end of tenancy

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Part 3 Condition Inspections

Rental unit to be empty

- 14** The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Tenant may appoint an agent

- 15** (1) The tenant may appoint an agent to act on his or her behalf to attend a condition inspection and sign a condition inspection report described in section 23 or 35 of the Act.
- (2) The tenant must advise the landlord, in advance of the condition inspection, that an agent will be acting for the tenant in respect of the condition inspection and condition inspection report.
- (3) The landlord must not accept an appointment or act as the tenant's agent for the purposes of subsection (1).

Scheduling of the inspection

- 16** (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.
- (2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Condition inspection report

- 18** (1) The landlord must give the tenant a copy of the signed condition inspection report
- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
 - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
 - (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.
- (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.

Disclosure and form of the condition inspection report

19 A condition inspection report must be

- (a) in writing,
- (b) in type no smaller than 8 point, and
- (c) written so as to be easily read and understood by a reasonable person.

Standard information that must be included in a condition inspection report

20 (1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord;
- (e) the date of the condition inspection;
- (f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
 - (i) entry;
 - (ii) living rooms;
 - (iii) kitchen;
 - (iv) dining room or eating area;
 - (v) stairs;
 - (vi) halls;
 - (vii) bathrooms;
 - (viii) bedrooms;
 - (ix) storage;

- (x) basement or crawl space;
- (xi) other rooms;
- (xii) exterior, including balcony, patio and yard;
- (xiii) garage or parking area;
- (g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;
- (h) any other items which the landlord and tenant agree should be included;
- (i) a statement identifying any damage or items in need of maintenance or repair;
- (j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;
- (k) the following statement, to be completed by the tenant:

I,

Tenant's name

☐ agree that this report fairly represents the condition of the rental unit.

☐ do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

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(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [*condition inspection: end of tenancy*] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) the tenant's signature indicating agreement with the deduction, and

(iii) the date on which the tenant signed.

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

[am. B.C. Reg. 234/2006, s. 16.]