



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: CNR MNSD OLC RR FF
For the landlord: MNDC MNSD 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 male tenant applied for the return of all or part of the security deposit, to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided, for an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and to recover the filing fee.

The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the security deposit, and to recover the filing fee.

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 evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence of the landlord was excluded as it was not served in accordance with the rules of procedure. The landlord confirmed receiving a portion of the tenants’ evidence. As a result, the hearing was adjourned to allow time for the tenant to re-serve the tenants’ evidence again to ensure the landlord had all 15 pages of the tenants’ original evidence. The landlord was also given the opportunity to respond to the tenants’ evidence with their rebuttal evidence as necessary.

At the re-convened hearing on May 17, 2013, the tenants agreed to receiving the landlord's rebuttal evidence, and the landlord agreed to receiving the tenants' rebuttal evidence. After the hearing, the tenants submitted additional evidence which has not be considered as the hearing had already concluded.

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 Matter

During the hearing, the tenants testified that they vacated the rental unit on March 31, 2013. As a result, the male tenant requested to withdraw his application to cancel the 10 Day Notice for Unpaid Rent or Utilities, and for an order compelling the landlord to comply with the Act, regulation or tenancy agreement.

The male tenant wished to proceed with his application for a retroactive rent reduction (a monetary order as the tenancy has since ended), for the return of double the security deposit, and to recover their filing fee.

Settlement Agreement

During the hearing, the parties agreed to settle on the following during the hearing:

- #1. The tenants agree to pick up their personal items and any garbage on Wednesday, May 22, 2013, between 2:30 p.m. and 4:00 p.m.
- #2. The landlord withdraws his \$200.00 claim for garbage removal/personal item Disposal charges so that the tenants may pick up their personal items and any garbage as per #1 above. The landlord is at liberty to re-apply for the \$200.00 garbage removal/personal item disposal charges **if the tenants fail to comply with #1 above.**
- #3. The tenants agree to comply with the terms of this settlement agreement and also agree that the landlord may dispose of any remaining items left at the rental unit after May 22, 2013.

This settlement agreement was made in accordance with section 63 of the Act. I order the parties to comply with the terms of this settlement agreement. The remainder of this decision will address the remaining matters that were not agreed upon by the parties during the hearing.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on January 1, 2013 and was to revert to a month to month tenancy after July 1, 2013. Monthly rent in the amount of \$1,100.00 was due on the first day of each month. The tenants paid a security deposit of \$550.00 at the start of the tenancy.

The male tenant stated that the tenancy ended based on the mutual agreement of the parties. The landlord denies that the tenancy ended by mutual agreement. According to the landlord, the tenants failed to provide proper Notice and breached a fixed term tenancy by vacating the rental unit on March 31, 2013.

The male tenant submitted an application in the name of the male tenant only, while the cross-application filed by the landlord, names both tenants. As a result, I have referred to both tenants as both tenants attended the hearing and both tenants were named in at least one application for clarity purposes.

Tenants' claim

The tenants are claiming \$3,000.00, however, as described below, the actual amount of the claim described by the tenants during the hearing was \$2,700.00.

Item #	Description	Amount
1	Double original security deposit of \$550.00	\$1,100.00
2	Rent reduction (monetary order) for January 2013, February 2013 and March 2013 at a \$400.00 reduction per month 3 months total	\$1,200.00
3	Damage to personal items	\$400.00
	TOTAL	\$2,700.00

Based on the above, the hearing proceeded with a monetary claim of \$2,700.00 as the tenants were unable to explain what their claim for the remaining \$300.00 was comprised of.

Tenants' Item #1 of 3

The tenant testified that he is claiming for the return of double the original security deposit of \$550.00 for a total of \$1,100.00. The male tenant claims that he gave written notice and referred to his "Exhibit III" in evidence. In that document the tenant writes to the landlord "...To move out, I am demanding from you \$3,000. for my inconvenience and expenses...." In that document, the tenant does not indicate when he is vacating the rental unit. The landlord testified that he did not end the tenancy by mutual agreement and that the tenants signed a fixed term tenancy which did not expire until July 1, 2013.

The parties agree that the tenants vacated the rental unit on March 31, 2013. The landlord continues to hold the security deposit of \$550.00. The landlord applied for dispute resolution claiming towards the security deposit on April 7, 2013. During the hearing, the tenant stated that he provided his forwarding address on paper to the landlord which the landlord disputed. The tenant later confirmed that he did not provide his written forwarding address to the landlord.

Tenants' Item #2 of 3

The tenants are claiming \$1,200.00 comprised of \$400.00 for a three month retroactive rent reduction (a monetary order request now that the tenancy has ended) for loss of heat in a portion of the rental unit, for disrupted TV service, for the landlord failing to provide a dishwasher as indicated in the tenancy agreement, and for the landlord failing to repair stairs as promised.

Regarding the alleged loss of heat in the rental unit, the male tenant testified that the tenants were without heat in the master bedroom and had little heat in the living room throughout the entire three months of the tenancy. The tenant referred to a document dated Saturday March 9, 2013, which reads in part:

"...despite out constant reminders that bedroom had no heater, living room main heater doesn't work, bathroom sink and shower doesn't function properly, etc., but you do nothing....My wife has been filling Hot Water Bottles every night to take to bed to get it warmed up. We've reminded you a few times, in vain..."

[reproduced as written]

The landlord's wife testified that a portable heater was provided to the tenants which the tenants confirmed receiving, however, the tenants stated that the portable heater was not sufficient to provide sufficient heat. The document dated March 9, 2013 from the tenant supports this by indicating that the additional heater provided is small and inadequate.

Regarding the alleged disrupted TV service, the male tenant testified that the TV service was interrupted for 7 days and that the landlord changed the service provider. The landlord confirmed that the TV service provider was changed resulting in half of a day of TV interruption, however, denies that the tenant was without TV for 7 days.

The male tenant was unsure about the dates where TV service was interrupted other than to testify that on January 22, 2013, the TV service was disrupted for 7 days. The male tenant also claims that from mid-February to the end of February 2013, there was a disruption in TV services but had no documentary or witness testimony to support this portion of his claim.

Regarding the dishwasher issue, the landlord confirmed that an error was made when signing the tenancy agreement as a "dishwasher" was included in the tenancy agreement, but there was no dishwasher in the rental unit. The male tenant stated that he did not have the opportunity to confirm if the rental unit had a dishwasher prior to moving into the rental unit, due to him entering the rental unit with the landlord's permission only to discover that the rental unit was still occupied by other tenants and did not want to trespass so immediately left the rental unit. The landlord did not dispute that the dishwasher was an error on the landlord's part but testified that they did offer to have a dishwasher installed. The tenants submitted a document dated February 5, 2013 which reads in part:

"...In addition to Cable TV, you undertake to provide a Dishwasher with my Rental Contract but did not install it before I moved in. It is too late to install it now, as it requires renovation work and I can't allow interruptions in our life..."

[reproduced as written]

Regarding the alleged unrepaired stairs, the tenant confirmed during the hearing that he had a verbal agreement to repair stairs only with the landlord and that nothing was agreed to in writing. The landlord stated that in January 2013, the landlord installed non-slip material on the stairs for the tenants.

Tenants' Item #3 of 3

The tenants are claiming \$400.00 for damage to their personal items which allegedly occurred as according to the male tenant "we were in a hurry to move". The tenants stated that they were unable to move their personal items so they left many of their personal items outside on the deck of the rental unit until such time that they could return to pick them up. The male tenant referred to several photos submitted in evidence and claimed that three desks were worth \$400.00, however, had no evidence regarding the value of the items allegedly damaged. The landlord stated that they would be treating the personal items as garbage and would be removing the items unless the tenants returned to pick up their personal items. The parties reached a settlement agreement described earlier in this decision regarding the date and time where the tenants would return to pick up their remaining personal items and that any remaining items may be discarded by the landlord.

Landlord's claim

During the hearing, the landlord withdrew their \$200.00 claim for garbage removal as described earlier in this decision. The landlord's remaining monetary claim of \$1,100.00 is comprised of the loss of rent for April 2013.

The landlord testified that the tenants provided no written notice and breached the fixed term tenancy by vacating the rental unit on March 31, 2013. The male tenant testified that tenants' "Exhibit III" constitutes the tenants' written notice to the landlord.

Analysis

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

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.

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.

Landlord's claim for loss of April 2013 rent – I will first consider whether the tenants ended the tenancy in accordance with the *Act*. Based on the documentary evidence provided by the tenants "Exhibit III", **I find** that this document does not constitute a proper notice under the *Act*. Firstly, the tenants did not provide a date that they would be vacating. Secondly, the *Act* does not permit a tenant to end a fixed term tenancy except through a mutual written agreement with the landlord, which there was no evidence presented of during the hearing. A verbal agreement to end a fixed term tenancy is not enforceable, and the landlord disputed that any such verbal agreement was ever made. Therefore, **I find** the tenants breached section 45 of the *Act* which states:

Section 45 of the *Act* states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

[emphasis added]

Due to the tenants' breach of section 45 of the *Act* I **find** the landlord has met the burden of proof and is entitled to compensation in the amount of **\$1,100.00** comprised of loss of rent for April 2013.

Tenants' claim: Item #1 – The tenant testified that he is claiming for the return of double the original security deposit of \$550.00 for a total of \$1,100.00. As I have already determined that the tenants breached section 45 of the *Act* by breaching a fixed term tenancy, I find the tenancy ended on March 31, 2013, by the tenants own actions. The male tenant originally stated that he provided the tenants' forwarding address to the landlord and later confirmed that he did not provide his written forwarding address.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Based on the above, **I find** the tenants failed to provide their written forwarding address to the landlord as required by the *Act*. Therefore, **I dismiss** the tenants' claim for double the security deposit, without leave to reapply, as the landlord is not required to return the security deposit until the tenants have provided their written forwarding address to the landlord. I will deal with the tenants' original security deposit later in this decision.

Tenants' claim: Item #2 – The tenants are claiming \$1,200.00 comprised of \$400.00 for a three month retroactive rent reduction for loss of heat in a portion of the rental unit, for disrupted TV service, for the landlord failing to provide a dishwasher as indicated in the tenancy agreement, and for the landlord failing to repair stairs as promised.

The male tenant testified that the tenants were without heat in the master bedroom and had little heat in the living room throughout the entire three months of the tenancy. The tenant referred to a document dated Saturday March 9, 2013, which reads in part:

“...despite out constant reminders that bedroom had no heater, living room main heater doesn’t work, bathroom sink and shower doesn’t function properly, etc., but you do nothing....My wife has been filling Hot Water Bottles every night to take to bed to get it warmed up. We’ve reminded you a few times, in vain...”

[reproduced as written]

While I accept that the tenants advised the landlord in writing, the document was dated March 9, 2013, which is just three weeks before the tenants vacated the rental unit. There was no evidence presented during the hearing that the tenants wrote to the landlord in January 2013 requesting that the heating was insufficient and provided a date to the landlord to have the heating corrected by. Therefore, **I find** the tenant has failed to meet part 4 of the test for damages or loss, by failing doing everything that was reasonable to minimize the loss. At the very least, I would have expected the tenants to have advised the landlord in January 2013 and to have provided documentary evidence that they advised the landlord and requested that the problem be rectified by a specific date. In the matter before me, **I find** the tenants waited two months before notifying the landlord in writing and are not entitled to compensation as a result. Based on the above, **I dismiss** this portion of the tenants’ claim due to insufficient evidence, without leave to reapply.

Regarding the alleged disrupted TV service, the male tenant testified that the TV service was interrupted for 7 days and that the landlord changed the service provider. The landlord confirmed that the TV service provider was changed resulting in half of a day of TV interruption, however, denies that the tenant was without TV for 7 days. The male tenant was unsure about the dates where TV service was interrupted other than to testify that on January 22, 2013, the TV service was disrupted for 7 days. The male tenant also claims that from mid-February to the end of February 2013, there was a disruption in TV services but had no documentary or witness testimony to support this portion of his claim.

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. Given the above, **I find** the tenants have failed to provide sufficient evidence that his TV service was interrupted for more than half of a day when the TV service provider was changed. **I find** that half of day without TV service over the course of a three month tenancy is

reasonable when related to the change of a TV service provider, and that the landlord did not breach the *Act* as a result. Therefore, **I dismiss** this portion of the tenants' claim due to insufficient evidence, without leave to reapply.

Regarding the dishwasher issue, the landlord confirmed that an error was made when signing the tenancy agreement as a "dishwasher" was included in the tenancy agreement, but there was no dishwasher in the rental unit. The male tenant stated that he did not have the opportunity to confirm if the rental unit had a dishwasher prior to moving into the rental unit, due to him entering the rental unit with the landlord's permission only to discover that the rental unit was still occupied by other tenants and did not want to trespass so immediately left the rental unit. The landlord did not dispute that the dishwasher was an error on the landlord's part but testified that they did offer to have a dishwasher installed. The tenants submitted a document dated February 5, 2013 which reads in part:

"...In addition to Cable TV, you undertake to provide a Dishwasher with my Rental Contract but did not install it before I moved in. It is too late to install it now, as it requires renovation work and I can't allow interruptions in our life..."

[reproduced as written]

Based on the above, **I find** that although the landlord agrees that an error was made by including "dishwasher" when there was no dishwasher in the rental unit, the landlord attempted to provide a dishwasher in February 2013 which was refused by the tenants. Therefore, **I find** the tenants extinguished any claim for compensation regarding the dishwasher once they refused to have a dishwasher installed in the rental unit as the tenants failed to do what was reasonable to minimize the loss, which was to permit the landlord to install the dishwasher that they were requesting. **I find** it unreasonable to prevent the landlord from correcting an error they admitted to, and then to claim for compensation after the fact. Given the above, **I dismiss** this portion of the tenants' claim due to insufficient evidence, without leave to reapply.

Regarding the alleged unrepaired stairs, the tenant confirmed during the hearing that he had a verbal agreement to repair stairs only with the landlord and that nothing was agreed to in writing. The landlord stated that in January 2013, the landlord installed non-slip material on the stairs for the tenants. The tenant failed to provide documentary evidence in support of this portion of this claim. Therefore, **I dismiss** this portion of the tenants' application due to insufficient evidence, without leave to reapply.

Tenants' claim: Item #3 – The tenants are claiming \$400.00 for damage to their personal items which allegedly occurred as according to the male tenant "we were in a

hurry to move". The tenants stated that they were unable to move their personal items stored their personal items outside on the outside deck of the rental unit until such time that they could return to pick them up. The tenant referred to several photos submitted in evidence and claimed that three desks were worth \$400.00, however, had no evidence regarding the value of the items allegedly damaged.

For this portion of the tenants' claim, the tenant has provided no evidence that the landlord have breached the *Act*, regulation or tenancy agreement. **I find** that the actions of the tenants likely led to any damage to their own personal items, due in part to the tenants being in a hurry to vacate the rental unit, and due to the tenants leaving their personal items outside and failing to arrange for proper storage of their personal items. Therefore, **I dismiss** this portion of the tenants' claim due to insufficient evidence, without leave to reapply.

I remind the parties that they reached a settlement agreement described earlier in this decision regarding the date and time where the tenants would return to pick up their remaining personal items and that any remaining items may be discarded by the landlord.

As the tenants' application did not have merit, **I do not** grant the tenants the recovery of the filing fee.

As the landlord's application did have merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

I find the landlord has established a total monetary claim in the amount of **\$1,150.00** comprised of \$1,100.00 for the loss of April 2013 rent, and the \$50.00 filing fee. The landlord continues to hold the tenants' security deposit of \$550.00 which has accrued \$0.00 in interest. **I authorize** the landlord to retain the tenants' full security deposit of \$550.00 in partial satisfaction of the claim and **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$600.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants' claims are dismissed due to insufficient evidence, without leave to reapply.

I find the landlord has established a total monetary claim in the amount of \$1,150.00. I authorize the landlord to retain the tenants' full security deposit of \$550.00 in partial

satisfaction of the claim and I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$600.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: May 29, 2013

Residential Tenancy Branch

