Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for the cost of emergency repairs, compensation for damage or loss under the Act, return of the security and pet deposits, Orders that the landlord complete emergency repairs, that the tenants be allowed to reduce rent for repairs agreed upon but not completed and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

This hearing commenced on June 17, 2013 and was reconvened on July 25, 2013. The parties were reminded that they continued to provide affirmed testimony.

The tenants confirmed that they have vacated the unit; therefore, the portion of the application requesting repair was withdrawn.

Both parties confirmed receipt of all evidence with the exception of a CD that given to the landlord on June 12, 2013. The landlord had not viewed the CD. The tenants had not given the digital evidence to the landlord at least 5 days prior to the hearing, nor had they ensured the landlord had been able to access that evidence, as required by the Rules of Procedure. Therefore, the CD was set aside and the tenants were at liberty to provide oral testimony in relation to the content of the CD.

The landlord said they have submitted an application for dispute resolution, made at a Service BC office on June 18, 2013. A search was made of the Residential Tenancy

hearing system and it was not until after the hearing was adjourned that I was able to establish that the landlord did submit a claim against the security deposits on June 18, 2013, via the Chilliwack Service BC office. That application was not made within the time-frame that would allow the applications to be joined and the tenant's hearing had commenced.

Issue(s) to be Decided

Are the tenants entitled to compensation for the cost of emergency repairs?

Are the tenants entitled to compensation for damage or loss under the Act?

Are the tenants entitled to return of the pet and security deposits paid?

Are the tenants entitled to compensation in the form of a rent reduction for repairs agreed upon but not provided?

Are the tenants entitled to return of the filing fee costs?

Background and Evidence

The tenancy commenced on April 15, 2013, rent was $900.00 per month, a $450.00 security deposit and $150.00 pet deposit was paid.

The landlord said he met with the male tenant on April 14, 2013 but did not schedule a move-in condition inspection report as the tenants wanted the female tenant present. The landlord went to the property on April 17 but the female tenant was not present. The landlord confirmed he did not supply the tenants with a specific date and time for completion of a move-in condition inspection report.

The tenants said they vacated the unit by June 2; the landlord stated they left on June 3, 2013. The parties agreed that on June 3, 2013 the landlord was given the keys and the tenant's written forwarding address.

When the parties met at the unit at the end of the tenancy the tenants were presented with a condition inspection report that had already been completed, including the move-in portion. The tenants would not sign the report. A copy of the inspection report was supplied as evidence.

The tenants have made the following claim for compensation:

Pest Control	$110.00
April rent abatement	450.00
May rent abatement	900.00
Cleaning – tenant's time 6 hours	60.00

Moving costs	800.00
TOTAL	$2,320.00

The tenants have requested return of the pet and security deposits totalling $600.00.

The tenants supplied the following documents as evidence:

- Condition inspection report;
- Photographs taken at the end of the tenancy;
- May 4, 2013 Terasen Gas meter inspection report indicating 2 leaks from the “M hot water tank” and “main shut valve “heater” 1:00 p.m. “service unit,” this notice included a direction that a licenced gas contractor inspect the gas piping and appliances in the home to ensure safe operation and to turn on the gas meter;
- May 11, 2013, 2:45 p.m. Fortis BC Notice of Hazardous Condition, indicating the gas meter had been turned off, that other emergency work was pending, on-going issue;
- May 11, 2013 City of Chilliwack Fire Department Responsibility Notice issued at 12:07 directing the owner to immediately repair a valve leak on gas line feeding the hot water tank;
- May 14, 2013 letter to landlord from tenants, outlining deficiencies with the rental unit;
- May 16 2013 Pest Control invoice in the sum of $110.00 for services provided at 2 p.m. establishing that rodents are in the attic, with recommendations for control and notation that electrical wires had been chewed;
- May 17, 2013 Fortis BC notice indicating “Caution: Action Required” in relation to a possible leak on the hot water tank control valve; and a
- May 17, 2013 moving cost estimate in the sum of $903.00.

The tenants supplied photographs showing areas that needed to be cleaned at move-in, rodent access points around the house, chewed wires and evidence of deck construction.

When the tenants moved into the unit they used their own time to clean the unit. The floors needed washing, there was grease on the kitchen ceiling, the oven was dirty, walls needed washing, sawdust covered areas of the home and trim in the bedroom was dirty. The tenants completed cleaning and have claimed compensation for the time spent.

There was no dispute that at the beginning of the tenancy the tenants went 3 days without hot water. While the tenants were away the landlord turned the gas off and made the repair on April 29, 2013.

On April 15, 2013 the landlord told the tenants he would replace the hot water heater regulator, which was completed while the tenants were away. The tenants said that the landlord is prohibited by the BC Safety Authority Regulation, section 24 and 26, from

doing repair on an occupied rental unit. A copy of this Regulation was not supplied as evidence; the tenant read from the document which indicated that a homeowner may apply to install their own system and may not do so if the unit is a rental. The landlord said that it is not illegal for him to work on his own gas appliances and that he did so in response to the notices issued by the gas companies

On May 3, 2013 the tenants called the landlord in relation to a gas leak and, according to the landlord, on May 4, 2013 the gas company completed a courtesy repair. The landlord then replaced the regulator on the water tank. One week later the tenants called, again reporting a gas leak. The landlord had guests and did not return the call for over 1 hour; the landlord was unable to go to the home and told the tenants to open their windows and to not light anything. The tenant was angry and refused to turn off the gas.

On May 5, 2013 the landlord went to the rental unit and turned off the gas, cleaned a coupler and did a soap test; no leaks could be seen and the tenant said he could not smell gas. Later in the day the tenant again called the landlord reporting he could smell gas; the tenant said he would call the fire department.

The May 11, 2013 Responsibility Notice issued by the City of Chilliwack Fire Department indicated the hot water tank had a gas line leak. The landlord obtained a copy of a Fire Incident Report issued by the fire department on May 12, 2013. This report indicated that on May 11 the department had responded to a reported smell of gas; that they found 2 occupants outside of the home, that there was no smell of natural gas, that the home was not affected and that the shut off value area was not leaking. A notice was left indicating the valve should be replaced and that there was no need to contact the gas company. The tenants said they had not received this report.

A May 13, 2013 notice issued by Fortis BC indicated that the gas was shut off at the meter and that other emergency work was pending, but that the issue was being dropped and the fire department was involved.

On May 13, 2013 the landlord had a professional heating company to replace both gas valves in the home; the tenants were in the home and the landlord submits that an emergency situation did not exist.

On May 14, 2013 the tenants gave the landlord a letter requesting emergency repairs:

- Front door deadbolt required repair; and
- Squirrels in the attic and believed to be in the walls.

The letter listed a number of non-emergency repairs that included the bathtub drain, stove hood, leaking washer, back deck tripping hazard and garbage; leaking kitchen sink; key needed for back door; base of toilet need caulking; bathtub and shower need caulking; and the fire alarms should be replaced. The letter thanked the landlord for

fixing the natural gas leak on the hot water tank; even though it had taken almost 1 month to repair. The tenants gave the landlord 1 week to make repairs or they would take action via the Residential Tenancy Branch.

There was no dispute that the landlord was aware squirrels were able to enter the attic. On numerous occasions the tenants spoke to the landord, asking that something be done to control entry to the attic but that the landlord would not take any action. The tenants felt the presence of rodents was a health issue. On the 1st day of the tenancy the tenants sent the landlord a text message asking he deal with the problem; they asked for traps and every time the tenants asked for action the landlord said he was busy doing something else.

On May 17, 2013 the landlord was at the home repairing a lock and was asked if he would deal with the pests; he said he was fixing the lock. The tenant did not tell the landlord that they had arranged to have a pest control company inspect the home later that day; the landlord became aware of this when served with the Notice of hearing package. There was no evidence before me that the landlord was made aware of the Fortis BC notice that had been issued on that date suggesting there was a “possible leak” on the hot water control valve.

On May 18, 2013, when at the home working on replacing a deck the landlord sealed some attic entry points and put up mesh, to stop pests from entering the attic. The landlord also used expanding foam. The wires that had been chewed were not live; but old wiring. The landlord did not doubt that some feces would have been in the attic, as the home was 60 years old and had had pests.

The tenant’s written submission indicated that on May 18, 2013 they smelled natural gas; no testimony was provided in relation to this allegation.

The landlord said that they did clean the unit prior to the tenant’s moving into the home but missed areas such as the top shelf in the kitchen.

The landlord said that on May 12, 2013 the deadbolt lock was repaired, that the tenants were given 2 new keys.

On May 29, 2013 the tenants gave the landlord Notice that they would vacate the unit and by June 3, 2013 they have moved out of the home.

The tenants summarized that they ended the tenancy without full notice as a result of the emergency situation posed by the gas leaks, chewed wires in the attic and water that backed up in the bathtub when the tenants took showers.

The tenants stated that the tenancy had no value and that all rent paid should be returned. The tenants provided an estimate for moving costs and said that they did hire a company; no verification of this cost was supplied as evidence.

The landlord said that no emergency situation existed; that the gas service never placed the tenants at risk and that the other concerns were addressed.

Analysis

Pursuant to section 44(f) of the Act I find that the tenancy ended on June 3, 2013, when the tenants returned the keys of the rental unit to the landlord.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenants.

Section 33 of the Act sets out how emergency repairs should be approached and defines emergency repairs as:

- Urgent;
- necessary for health or safety;
- major leaks;
- damaged or blocked water or sewer pipes or plumbing fixtures;
- defective locks; and/or
- electrical systems.

Section 32 of the Act provides, in part:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

In relation to the claim for a loss of value of the rental unit equivalent to the full amount of rent paid, there was no evidence before me to support the tenant's claim that the home had no value as a rental unit. The tenants were able to reside in the home and had full use of the home during that period of time.

There was no dispute that the home had squirrels in the attic and that from the time of move-in the landlord was aware of the presence of the squirrels. I find that a reasonable standard of housing would include immediate responses to reports of squirrels in an attic space; however, there was no evidence before me that the pests posed any emergency or legitimate health concern. The landlord failed to take any definitive steps to deal with the squirrels until May 18, 2013, a delay that I find was not reasonable.

There was no effort made on the part of the landlord to have a professional company ensure that proper egress from the attic was provided to the squirrels, so that they could exit and not re-enter the attic. Therefore, as the landlord did not take steps within a reasonable period of time to properly address the presence of squirrels, I find that the tenants suffered a loss of quiet enjoyment the tenants could expect from a rental unit and that they are entitled to nominal compensation in the sum of $75.00. The balance of the claim related to pest control inspection is dismissed.

I have considered the submissions made in relation to the repeated reports of natural gas leaks and the documentation provided. Of concern is the notice that was issued on May 4, 2013 by Terasen Gas, directing the property owner to have a licenced gas contractor inspect the piping and appliances, in order to ensure safe operation.

There was disputed testimony in relation to whether a repair had been completed by the gas company on May 4. On May 14, 2013 the tenants had given the landlord a letter which included their thanks for gas repairs that had been completed to that date; even though they had taken 1 month to be addressed.

I have considered the period of time during the tenancy between April 26, 2013, when the tenants reported the smell of gas to the landlord and May 13, 2013; when the landlord hired a gas company to compete the repairs. I find that there was some delay in the repair and, while the landlord may possess the legal right to make repairs to the gas service, the landord failed to hire a licenced gas contractor to the inspect the gas piping and appliances, as was directed in the May 4, 2013 gas meter inspection issued on that date. If the landlord had simply hired a contractor the tenants would have been assured that any gas issue was being addressed as directed by the gas company. I find that when the landlord delayed in hiring a contractor, until May 13, 2013; the tenants did suffer a loss of quiet enjoyment of the home.

Therefore, I find that the tenants are entitled to compensation for the nominal sum of $100.00 for the loss of value of the rental unit from May 4 to May 12, 2013, inclusive. Even if a courtesy repair had been completed on May 4 I find it would be reasonable that the landlord further inspect the gas lines; this did not occur until May 11, after another complaint had been made by the tenants and it was not until May 13, 203 that the landlord had a licenced gas contractor attend the home. I find that the landlord was aware of the tenant's concerns and that while he did attempt repairs himself, it would have been reasonable to have a professional gas contractor carry out those repairs.

There was no evidence before me that confirmed gas leaks after May 13, 2013. At this point a licenced contractor had been to the home and I find that the complaints made by the tenants after that date were unfounded. The May 17, 2013 Fortis BC report indicated only that there was a possible leak; no confirmation of such was made.

As the tenants went without hot water during the period of time in April that the gas was shut off I find that the tenants are entitled to compensation in the sum of $75.00 for the loss of use of that service. The landlord was informed of the problem on April 26 and it was not repaired until April 29, 2013. The landlord did not dispute that the tenants went without hot water for a period of 3 days. I find that the balance of the claim for rent abatement in April is dismissed.

In the absence of any written notice given to the landord at the start of the tenancy in relation to the need for cleaning, I find that the claim for cleaning costs is dismissed. I would expect to see some sort of written communication to the landlord, issued at the start of the tenancy, requesting the cleaning be addressed; this did not occur.

The deadbolt to the home had been repaired by May 4, 2013 and the access points to the attic were repaired on May 18, 2013. The tenants expected the landlord to address the other concerns they had mentioned in their May 14 letter such as a slowly draining bathtub, the stove hood, leaking washer, kitchen sink, key for the back door, caulking and fire alarms inspection. I find that some of the concerns raised by the tenants were trivial, such as the allegation of a tripping hazard.

The tenants indicated in their May 14, 2013 letter to the landlord that if the issues they wanted addressed were not repaired, they would take further action through the Residential Tenancy Branch (RTB.)

The tenant's May 17, 2013 application was made to the RTB but the tenants did not wait to obtain any Orders; they chose to vacate.

In the absence of any evidence of moving costs incurred by the tenants, and in the absence of evidence that the home was uninhabitable, I find that this portion of the claim is dismissed.

Therefore, the tenants are entitled to the following:

	Claimed	Accepted
Pest Control	$110.00	$75.00
April rent abatement	450.00	75.00
May rent abatement	900.00	100.00
Cleaning – tenant's time 6 hours	60.00	0
Moving costs	800.00	0
TOTAL	$2,320.00	$250.00

I find that the tenant's claim against the deposits was premature. I have found that the tenancy ended on June 3, 2013 and find that the written forwarding address was given to the landlord on that date. The landlord then applied claiming against the deposits; within fifteen days, June 18, 2013. Therefore, the landlord will continue to hold the pet and security deposits in trust until such time as a decision issued in relation to the landlord's claim against the deposits.

I find that the tenants have leave to reapply for return of the deposits, should the landlord's application not proceed. If the landlord's application fails, then policy may be applied, ordering return of the deposits in accordance with the Act.

As the tenant's application has merit I find that the tenants are entitled to the $50.00 filing fee.

Based on these determinations I grant the tenants a monetary Order in the sum of $300.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I have not made any finding in relation to the right of the tenant's to end the tenancy in the way that they did; that would be related to any claim made by the landlord.

The balance of the monetary claim is dismissed.

Conclusion

The tenants are entitled to compensation in the sum of $250.00; the balance of the claim is dismissed.

The claim requesting return of the deposits was premature; the tenants have 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: June 17, 2013

Residential Tenancy Branch