



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Luxury Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MNR, MND, MNSD, MNDC, FF

For the tenants – MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a Monetary Order for the return of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

This hearing was adjourned in August to allow the landlord's agent time to prepare evidence for this hearing. New hearing letters were sent to the parties with the date, time and passcodes for the reconvened hearing. The hearing went ahead as scheduled; two of the tenants along with the tenants' lawyer attended the conference call hearing. The telephone line remained open while the phone system was monitored for ten minutes; however, no one on behalf of the landlord called into the hearing during this

time. Based on this I find that the landlord has failed to present the merits of their application and the landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant JL testifies that this tenancy started on November 01, 2012 for a fixed term lease which was due to expire on October 31, 2014. Rent for this unit was \$4,000.00 per month plus 80 percent of utilities. Rent was due on the 1st day of each month. The tenants paid a security deposit of \$2,000.00 on October 06, 2012.

The tenants, assisted by their lawyer, made the following submissions:

The landlord did not conduct a move out condition inspection and failed to provide two opportunities for the tenants to attend a move out condition inspection. A move in inspection report only was forwarded to the tenants a few days before this hearing commenced.

On January 23, 2013 a leak occurred in the roof of the property which leaked water into the entrance hall. The tenants informed the landlord of this and were advised to place a bucket under the leak. The tenants placed a bucket under the leak and this had to be dragged outside daily to be emptied. The location of the 48 liter container used to catch the water meant the tenants could not open the front door easily.

The landlord sent roofing contractors to the property and someone also came and removed the light fixture. This left the tenants without light in this area. By April, 2013 the landlord had still not made any repairs under section 33 of the *Act* and the tenants felt the premises were becoming unlivable and they went to stay at one of the tenants parents in mid April.

On April 25 the tenants wrote to the landlord again about the roof situation and informed the landlord that there had been no update on the status of the roof replacement since January, the tenants believe there to be mould and consider the living conditions to be hazardous. The tenants ask to be immediately relieved from the lease without penalty or prejudice.

The tenants fully vacated the property on April 30, 2013 and returned the keys on May 16, 2013. During that period the tenant met with an agent of the landlord at the property and roofing contractors. The tenant wrote to the landlord again on May 16, 2013 outlining these meetings and provided a forwarding address in writing.

The tenants' application details the tenants request for the return of \$2,000.00 in rent paid for May, 2013. At the hearing the tenants request that this is amended to \$4,000.00 as they moved out on April 30, 2013 and now seek to recover all the rent paid for May, 2013.

The tenant (JL) testifies that in accordance with the tenancy agreement the tenants were to pay 80 percent of Hydro. The tenant testifies that the two other tenants living in the basement suite were to pay 20 percent of Hydro. The tenant testifies that they did not realize that they had been paying all the Hydro for the entire house since the start of their tenancy and were under the impression that the house had two meters. When the tenants determined that one meter served the entire house the tenants now seek to recover 20 percent of the Hydro bills that they have paid for the period of their tenancy. The tenant state that they should not have to collect Hydro payments from the other tenants as this is the landlord's responsibility.

The tenants have provided copies of the Hydro bills for the period of their tenancy. These show that \$1,127.73 was paid by the tenants for the entire house. The tenants therefore seek to recover \$225.55 from the landlord for the other additional 20 percent paid.

The tenants seek to recover the security deposit of \$2,000.00 and the filing fee of \$50.00.

Analysis

I have carefully considered all the evidence before me, including the undisputed testimony of the tenants. With regard to the tenants' claim for money owed or compensation for damage or loss; section 32 of the *Act* requires a landlord to 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.

Section 33 of the *Act* considers a leak in the roof to be an emergency repair. The tenants first notified the landlord of a roof leak in January, 2013 by April, 2013, three months later, and this emergency repair was still not made. Consequently, I find the landlord failed to comply with s. 32 of the *Act* and the tenants were therefore entitled to end the tenancy in accordance with section 45(3) of the *Act*.

The tenants had paid rent for May, 2013 of \$4,000.00. On the tenants application the tenants have requested a Monetary Order to recover rent for half the month of May. At the hearing the tenants request to amend this application to recover rent for all of May. In the absence of a formal and proper application to recover all of the rent for May and because the tenants did not return the keys until May 16, 2013, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

Consequently I uphold the tenants' application to recover **\$2,000.00** paid for rent for half of May, 2013.

With regard to the tenants' application to recover 20 percent of the Hydro bills. The tenancy agreement presented in evidence clearly states that the tenants are only responsible for 80 percent of Hydro bills. The tenants' evidence also shows that the tenants have paid for 100 percent of the Hydro bills for the duration of their tenancy. Tenants are not responsible to collect utility payments from other tenants sharing the same meter and this is the landlord's responsibility. Consequently, it is my decision that the tenants are entitled to recover 20 percent of the Hydro bills paid to an amount of **\$225.55** from the landlord.

With regard to the tenants application to recover the security deposit of **\$2,000.00**; The landlord have not appeared at the hearing to present any evidence as to why the tenants are not entitled to recover the security deposit. Therefore, it is my decision that the tenants are entitled to recover the security deposit from the landlord pursuant to s. 38(6)(b) of the *Act*.

As the tenants have been successful with this application the tenants are also entitled to recovery the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Rent for half of May, 2013	\$2,000.00
20 percent of Hydro bills	\$225.55
Security deposit	\$2,000.00
Filing fee	\$50.00
Total amount due to the tenants	\$4,275.55

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$4,275.55**. The order must be served on the Respondent and is enforceable through the Provincial Court 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: October 09, 2013

Residential Tenancy Branch

