# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNDC, MNSD, FF**

Introduction

This was a cross-application hearing. On July 15, 2014 the landlord applied requesting compensation for damage to the rental unit and damage or loss under the Act and to recover the cost of the filing fee from the tenants.

On August 29, 2014 one of the two co-tenants applied requesting compensation for damage or loss under the Act and return of the security deposit.

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

At the start of the hearing the tenant provided affirmed testimony confirming that his co-tenant received the landlord's hearing package and evidence, sent via registered mail.

The landlord then withdrew his application for dispute resolution and acknowledged that the security deposit had not been dealt with in compliance with the legislation.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $1,200.00; double the security deposit?

Is the tenant entitled to compensation for damage or loss in the sum of $264.38 in utility payments?

Is the tenant entitled to compensation in the sum of $3,300.00 for loss of quiet enjoyment of the rental unit?

Background and Evidence

The1 year fixed-term tenancy commenced on August 1, 2013; rent was $1,200.00 per month, due by the 1st day of each month. A security deposit in the sum of $600.00 was paid. The tenancy was to end effective July 31, 2014.

There was a unit in the lower level of the home; the tenants were paying utility costs and receiving reimbursement from the landlord. The tenant supplied copies of hydro and gas bills in support of the 1/3 cost he was to pay. The bills were in the tenant's name. There was another unit in the home, reliant upon the utilities that were in the tenant's name.

When the tenants moved into the unit they signed a copy of the move-out condition inspection form completed with the tenants who had just vacated. This was accepted as a proper inspection. No repairs to be completed were indicated on the report.

On June 1, 2014 the tenants sent the landlord an email, giving notice they would vacate at the end of the month.

The landlord located new occupants for July 1, 2014.

When the tenants vacated the landlord declined to complete an inspection as he was planning on painting the unit. The tenants had been willing to attend an inspection; email evidence confirmed the landlord's decision to cancel an inspection.

The landlord confirmed receipt of the tenant's forwarding address in mid-July 2014. A claim was not submitted against the deposit and the deposit has not been returned. The landlord sent the tenants information setting out a claim against the deposit.

The tenant has made a monetary claim for compensation alleging that from the start of the tenancy the landlord failed to make required repairs to the rental unit. The tenant said that at the start of the tenancy the following repairs were required:

- Replace 1 bedroom door;
- Replace hall closet door; and
- Repair main bathroom toilet.

The tenant said the unit had not been painted in the last 4 years and was due for painting.

Email evidence supplied showed that there was some communication between the parties; with the landlord attempting to set times for entry to complete repair to the toilet and doors and the tenants asking for delays or offering to complete work themselves.

Emails between the parties from August 8 and 10, 2013 showed the landlord asked the tenants to phone a plumber to have the toilet repair completed. In September the tenants did not want painters at the home to work on the exterior doors; they offered to complete that painting for the landlord. In October the tenants sent the landlord an email stating they would paint the unit and, when finished, the landlord could have his painters do the trim.

The landlord replied on October 19, 2013 stating he could not afford to repair the doors immediately, but would order them within a few weeks. The landlord gave the tenant's permission to paint the home any colour they wished and welcomed them to use his account at Cloverdale to obtain discounts.

On October 21, 2014 the landlord attempted to reschedule entry for some repair work. Several days later the tenant replied that they did not think the closet doors needed replacing; that they should only be fixed and painted. The next day the landlord sent a message stating he would meet with the tenants the next morning to look at the toilet with a repair person. The landlord had emailed on October 23 asking if he could enter, so he coordinate trades people.

On November 1, 2013 the landlord again emailed the tenants asking if he could come to secure the toilet; the tenants replied several days later saying they would leave the repair as the tenants were busy for the foreseeable future. The tenants suggested repairs be dealt with in the spring.

On March 30, 2014 the tenants emailed the landlord with a list of repairs that included: closet doors, paint in a hallway, the trim and baseboards; foyer flooring and the need for a screen door on the patio. The landlord replied saying he had been expecting to hear from the tenants. On May 4, 2014 the landlord told the tenants the doors were available and he would hire a carpenter to complete the work. The landlord would then hire painters, as they were fast. The tenants trusted the carpenter and did give, on occasion, him verbal permission for entry to the unit.

On June 2, 2014 the landlord sent an email indicating the carpenter was trying to complete the work on the door and would like entry; the tenants replied that week was not the best for them, but perhaps the following or weekend would be good.

The tenant said that it was not until the end of the tenancy that there was any urgency on the part of the landlord to complete repairs as he wanted it ready for new occupants.

The tenant alleged illegal entry to the unit by the landlord. The first occurred when the tenant moved in to the unit; they did not discuss this with the landlord.

On June 17, 2014 the landlord had wanted to enter the unit; the tenants had said they did not want entry. The female tenant was home and heard something; she went into the living room and found the landlord there and asked him to leave.

On June 28, 2014 the tenants emailed the landlord to express their displeasure having to work around strangers in the home. The tenants said the landlord had given out multiple keys to the unit, which made them uneasy. The tenants reminded the landlord they had a right to remain in the unit until July 1, 2014. The tenants told the landlord they did not want anyone else in the unit, with the exception of the carpenter, as their rights were being violated.

On June 29, 2014 the tenants found a work person in the home at 6 a.m. Entry occurred despite their email of June 28th and a note on the door denying entry to all but the carpenter. The door had been locked; this worker had a key to the unit. Later on June 29, 2014 a plumber had entered the unit while the tenant was out; the carpenter told him the plumber had been there. No notice of entry had been given.

The tenant confirmed he had emailed the landlord telling the landlord that the utility services would be terminated on June 27, 2014 and that the new account must be started so the occupant of the lower unit would not have her service interrupted. The landlord said he understood the tenants would be vacating on June 27 so that was why he had arranged for a maintenance person.

The landlord could not understand why an electrician entered the home unannounced in August 2013; he had no knowledge of this. The landlord had permission to enter the unit on June 12, 2014 and the tenants had told the landlord he could enter during the week of June 17, 2014; he believed he had permission. The landlord thought that since utility services were being terminated on June 27, 2014 the tenants would have vacated.

The tenants included a claim for loss of use of a portion of the property. The written submission indicated that this was for the failure to repair, clean at the end of the previous tenancy and the loss of use of the toilet and the bathtub in the main bathroom. The tenant said the tub leaked. The tenants had limited or no access to the lawn as it had grown out of control.

The landlord submitted that the tenants did nothing but delay repairs. They had a fixed-term lease and left early. The landlord dealt with this showing good will and located new occupants quickly.

On June 29, 2014 the landlord sent the tenant an email confirming he had a cheque for the “last month containing the utility bill payment.” The landlord did not dispute the amount of utility costs claimed by the tenant.

Analysis

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 that 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.

The tenants have claimed return of 25% of rent paid from the start of the tenancy, as compensation for a loss of quiet enjoyment and the landlord's failure to complete repairs.

From the evidence before me I find, on the balance of probabilities that despite much talk of repairs and painting, neither party insisted on enforcing their rights or took steps to meet obligations. The landlord would offer to make repairs or have someone attend at the unit and the tenants would respond that they were busy, denying entry, or they would offer to complete repairs themselves. The tenants then asked that nothing be done until spring of 2014. This leads me to find that the tenants claim has little weight. If the tenants had seriously wished to have repairs completed they were in a position to give written Notice to the landlord that the repairs should be completed by a specific time. The landlord would then have had a reasonable period of time to make repairs required by the legislation. From the evidence before me, any delay in repair was due to the indecision of both parties.

There was no evidence before me that the main bathroom toilet did not function; all correspondence referred to a toilet that was not properly secured to the floor. The tenants offered to paint the unit and asked that the doors not be repaired. The tenants said that once repairs commenced in May 2014 they took too long, but could not provide any times or dates of entry that would establish the number of days work that actually took place in the unit.

Section 28 of the Act provides:

***Protection of tenant's right to quiet enjoyment***

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*

From the evidence before me I find, on the balance of probabilities, that the tenants did not suffer anything but a minimal loss of quiet enjoyment. I found the claim excessive; given the absence of evidence that the tenants attempted to mitigate the claim made. There was no evidence of any communication with the landlord that would support a claim of 25%of the value of the tenancy, dating back to the start of the tenancy.

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

If there was any disturbance caused in the last several months of the tenancy the tenants have not proven what the duration of any disturbance was and the extent of disturbance during the evenings when they were at home. There was no evidence of any request by the tenants setting out the need to limit work being completed by the carpenter, which leads me to find that, if a disturbance was occurring, it was not to the extent that would support compensation. Therefore, I find that the claim for loss of quiet enjoyment is dismissed.

The claim for loss of use of the property was not established. This claim duplicated that related to repairs and quiet enjoyment and has been dismissed. There was no evidence before me the tenants made the landlord aware of a loss of use of property, such as the yard.

In relation to illegal entry, I find the entry that occurred on June 29, 2014 was in breach of the legislation. The landlord had been given notice that the tenants had possession of the unit until the end of the month and that they did not wish anyone but the carpenter to enter. The landlord did possess a right to enter, but was required to give notice as set out in section 29 of the Act; that did not occur. Therefore, I find that the tenants are entitled to a nominal sum of $50.00 for that disturbance.

I have not awarded the tenant any compensation for the 2nd entry that occurred on June 29, 2014 as they were not at home and another tradesperson was already present in the home completing work. Therefore, the tenant did not suffer a loss of quiet enjoyment.

In relation to prior entry, I find that the entry made earlier in June 2014 was inadvertent and not intended by the landlord. The landlord believed an appointment had been set for entry.

The tenant did not make the landlord aware of the entry alleged in 2013; no loss has been proven in this case.

The landlord did not dispute the sum claimed by the tenant for utilities. Therefore I find that the tenant is entitled to compensation in the sum of $264.38 for hydro and gas costs to the end of the tenancy.

I note that having utilities placed in a tenant's name for a building that has multiple units could be found to be an unconscionable term. The landlord is advised utilities are best placed in the landlord's name, with each occupant agreeing to pay the landlord a set percentage of the utilities. Another option is to have separate meters for each unit or to include utilities with rent owed.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord has confirmed that he did not schedule a move-out condition inspection; which, pursuant to section 36 of the Act, extinguished the landlord's right to claim against the deposit for damage to the unit. The landlord did not return the deposit within fifteen days of receipt of the forwarding address. Therefore, I find, pursuant to section 38(6) of the Act that the landlord must return double the $600.00 deposit.

Therefore, I find that the tenant is entitled to compensation in the sum of $50.00 for a loss of quiet enjoyment; $264.38 for utility costs and double the security deposit in the sum of $1,200.00. The balance of the tenant's claim is dismissed.

I find that the tenant's application has merit and that the tenant is entitled to recover the $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,514.38**.** 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.

Conclusion

The tenant is entitled to compensation in the sum of $50.00 for loss of quiet enjoyment; the balance of the claim is dismissed.

The tenant is entitled to compensation as claimed for utility costs.

The tenant is entitled to return of double the $600.00 security deposit.

The tenant is entitled to filing fee costs.

The landlord withdrew his claim.

This decision is final and binding 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: January 05, 2015

Residential Tenancy Branch