



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNDC, MNR, O, FF

Introduction

This was a hearing with respect to the tenants' application to cancel a Notice to End Tenancy for unpaid rent and for a monetary award and other relief. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord attended with his representative. The tenant and the landlord submitted documentary and digital evidence prior to the hearing. The tenants have applied to cancel a 10 day Notice to End Tenancy for unpaid rent and to restrict the landlord's right to enter the rental unit. At the hearing I was advised that the tenants are no longer living at the rental unit.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled?
Should the landlord's rights to enter the rental property be restricted?
Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house on rural property on Vancouver Island. The tenancy began in June, 2013. Neither party provided a copy of the tenancy agreement. I was informed that the original lease was made between the tenants and the landlord's property management company. The tenants signed a new agreement directly with the landlord in June, 2014. I was not provided with a copy of this agreement. The monthly rent was \$1,500.00 throughout the tenancy.

The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent dated June 5, 2015. The Notice to End Tenancy alleged that the tenant failed to pay rent in the amount of \$1,282.50 that was due on June 1, 2015. By letter to the landlord dated May 29, 2015 the tenants informed the landlord that they would withhold rent for

June and July as compensation for extermination costs they incurred to treat what they initially believed was a bedbug infestation. The bill for extermination treatments was the sum of \$2,782.50. The tenants cancelled their post-dated cheques for June and July and gave the landlord a replacement cheque in the amount of \$217.50.

The tenant testified that what he thought was a bedbug problem began in March when the tenants and their children began to suffer from itchy bites. The tenants informed the landlord of the problem; according to the tenants, the landlord refused to address the problem or to acknowledge responsibility for treating it. The tenant said that he received advice that treatment of the infestation was the landlord's responsibility, but when the problem became more acute and the landlord refused to act, the tenants hired a professional exterminator. The exterminator performed several thermal treatments of the rental unit. According to the tenant, the exterminator determined that bites were not caused by bedbugs, but were due to an infestation of bird mites throughout the house. The tenant said that there was also a flea infestation in the carpets. The tenant said that the exterminator suggested to him that the fleas were brought into the rental unit by mice.

In their application for dispute resolution the tenants claimed payment of the sum of \$12,032.50. Without amending their application the tenants sought to increase the amount claimed by submitting additional evidence, including a revised monetary order worksheet. Later, on July 15, 2015, the tenants submitted additional documentary evidence including written statements from third parties and information printed from the internet. The tenants included a copy of their online application, said to be amended to increase their claim to \$18,202.70. The amendment was submitted to the Residential Tenancy Branch as part of the tenants' package of additional documentary evidence. The tenants sent the package to the landlord's agent by courier on July 14, 2015. They included a further monetary order worksheet claiming a loss of income in the amount of \$2,000.00, a claim for motel expenses in the amount of \$3,152.70, gasoline expenses to drive to the rental property in the amount of \$300.00 and \$500.00 said to be for additional food expenses for living in a hotel. The monetary worksheets stated the following claims:

- Filing fee: \$100.00
- 6 Mattresses: \$3,000.00
- 1 couch: \$500.00
- 2 love seats: \$600.00
- 1 recliner: \$600.00

• Loss of reasonable use due to bugs, mice water pressure and heating, cooling. Amended because of septic issues found about black mould near bathroom, harassment from landlord and agent:	\$7,450.00
• Bug treatment services: \$2,782.50 amount withheld as emergency repairs.	
• Loss of income due to stress and not able to market our small business:	\$2,000.00
• Unable to live in house, had to live in hotel:	\$3,152.70
• Gas to drive back to house twice a day for a month:	\$300.00
• Additional food expense from living in hotel:	\$500.00
Total:	\$18,202.70

The tenants testified that several months after they moved into the rental unit in 2013, they told the landlord about birds nesting in the roof of the house, about mice in the house and about fleas in the carpets. The tenant said that the landlord declined to help and told the tenants to get a cat to take care of the mice and deal with the other problems themselves.

The tenants complained about low water pressure in the water supply from a well on the rental property. According to the tenants the landlord said that he ordered new parts for the pump that would take care of the problem, but nothing was ever done.

The tenants complained about the cost of heating; they wanted the landlord to replace the drafty windows but the landlord refused.

In June of 2014 the tenants signed a new tenancy agreement with the landlord. They repeated their verbal complaints about nesting birds, poor water pressure and the drafty windows.

The tenants testified that in the spring of 2015 they again complained about birds nesting in the roof. It was at this time that the tenants and their children began to suffer from insect bites, thought to be bedbug bites. They told the landlord about the problem and showed him pictures of the bites. They said that the landlord promised to investigate, but instead he left on trip for several weeks. In April the tenants complained about a severe flea infestation in the carpets. The tenants wrote a letter to the landlord dated May 1, 2015 requesting that the landlord take action to deal with the insect problems. When the landlord did not provide any assistance the tenants booked an appointment with a pest control company to treat the house. They informed the landlord

and said they expected to be reimbursed for the cost of the treatments. According to the tenants the landlord threatened to prevent the company from performing the treatment.

The pest control technician came to the house on May 5th. The tenant said that he found no evidence of bedbugs but found evidence of bird mites throughout the house and fleas in the carpets and furniture. The tenants said that they were told that the treatment would take care of the bird mites but if the nests were not removed from the house they would return. The tenants said that the landlord would not remove the bird nests while they were occupied, but later, when the nests were vacant, the landlord still did not remove them and instead just boarded up holes because the nests were too hard to remove.

The tenant said that the landlord did agree to pay for the pest treatments but later changed his mind. The tenants decided they would consider the pest treatments as emergency repairs and deduct the costs from rent.

The tenants testified that in June there was a serious problem with the septic sewer system on the property. The septic system leaked or overflowed and water and raw sewage accumulated under the deck and in the yard turning the yard muddy with sewage and waste water. According to a report from the health inspector, when the toilet in the rental unit was flushed bubbles rose up in the water under the deck. The health authority reported that the sewage system was failing. The tenants said the odour was terrible and the house was unliveable so the tenants moved into a hotel on June 16. They stayed there for a month. The tenants said they were not provided with any emergency contact by the landlord although evidence submitted shows that they communicated by e-mail with the landlord's agent.

The tenants recently purchased their own home. They did not provide any documentary evidence with respect to the purchase or with respect to the completion and possession dates for the transaction. At the hearing the tenants said they were moving to their new house at the end of July. The tenants apparently have not lived in the rental unit since June; they have returned to the property to look after their animals and have been engaged in moving belongings to their new house.

The tenants complained of harassment by the landlord and by his representative. They said that the landlord has entered the property without permission and placed video surveillance cameras to spy on them.

The landlord's representative said that he inspected the rental property on May 5th in response to the tenants' complaints. He saw nesting birds in the roof of the house. When the birds left the nests the landlord's representative sealed up the holes.

The landlord's representative did not consider the bird nests to be a serious concern. He submitted that the tenant's insect bites were due to fleas in the house and this was not the landlord's problem. He noted that the tenants were keeping goats on the rental property as well as a large flock of ducks and if there was a flea problem it was likely of the tenants' own making.

The landlord's representative testified that the septic problem was addressed and a septic company attended to service the system; there was a broken pipe and it was repaired. The landlord said that the septic problem affected only one bathroom on the house and there were two other bathrooms in the house available for the tenants to use. The landlord did not submit any documents or reports with respect to the septic system or the repairs to the system. The landlord apparently had someone attend at the rental property to repair a broken pipe in the septic system on or about June 20, 2015. The tenants contended that this repair did not solve the problem because, as reported by the health authority, the system itself was failing.

Analysis

The tenants submitted a copy of an invoice from the company they hired to treat the house for what was thought to be bedbugs. The invoice was for the heat treatment of a single family home. Heat treatments are commonly employed to treat bedbugs. The tenants did not submit any report from the company or any form of expert report to establish that the treatment was an effective method to treat the problem at the rental unit. The tenants claimed that they were told by a professional exterminator that they were suffering from a bird mite problem, but they did not submit any evidence from the exterminator to support their statement. The tenants submitted many pages of information from the internet devoted to a discussion of bird mites. The information was primarily anecdotal information, not from an acknowledged expert and I do not find that it constituted acceptable evidence to establish that the tenants suffered from a bird mite problem or that the heat treatment performed was a suitable or effective treatment. The tenants said that bedbugs were ruled out as the cause of the tenants' bites. The evidence from the tenants established that there was a long standing flea problem. There was evidence that there were fleas when the tenancy began and that they became much more severe in the spring of 2015. The tenants did not submit evidence that the heat treatment was an effective treatment for fleas.

I do not find that the tenant have provided evidence to establish on a balance of probabilities that they suffered from a bird mite problem caused by the landlord. The evidence supports the presence of fleas in the rental unit. I find that the evidence provided by the tenants does not establish that the landlord was responsible for the flea infestation in the rental unit. The tenants had a cat and kept their own animals on the property; according to the documents submitted by the tenants the fleas may have been brought into the rental unit from outside. I do not have evidence that the thermal treatment by the tenants was an effective flea treatment. The tenants have claimed amounts for the replacement of mattresses and furniture. According to the tenants' documents they purchased mattresses on June 6, 2015. The invoices submitted by the tenants stated that the customer was not requesting immediate delivery of the mattresses. The tenant submitted another invoice dated July 13, 2015 for the purchase of two sofas to be delivered on July 17th together with other items ordered on a different invoice. The furniture purchased by the tenants was clearly being delivered to the tenants' new house. I do not find that the tenants have proved that their existing furniture and mattresses were irreparably damaged by fleas or other insects or that the landlord was responsible for such damage or loss. The tenant's claim for the cost of mattresses and furniture they purchased is dismissed without leave to reapply.

The tenants claimed the sum of \$7,450.00 said to be for the loss of reasonable use due to the presence of bugs, mice, low water pressure, poor insulation and windows and later due to the septic problem in June. The tenants said they made verbal complaints during the tenancy, but despite their complaints, they made no written requests for any repairs and signed a new tenancy agreement for a further term in June of 2014. If the tenants had issues with the rental property it was up to them to state their concerns in writing and make an application to the Residential Tenancy Branch if the landlord did not act on their written complaints. The tenants have an obligation to mitigate their claim for damage or loss by taking reasonable steps to minimize their loss and this duty includes giving written notice to the landlord and making the appropriate application to the Residential Tenancy Branch to enforce their rights and the landlord's obligations. The tenants may not save up their grievances over the course of the tenancy and submit them as claims to be "cashed in" in when the tenancy ends. Although the relationship between the parties has become acrimonious, I do not find that the landlord's conduct amounts to harassment that would entitle the tenants a monetary award as compensation.

I do find that the tenants are entitled to some compensation for the recent loss of use due to the septic problem that occurred and I will address that claim in these reasons, but I find that the tenants are not entitled to a monetary award for past loss of reasonable use as claimed, and this portion of the claim is denied.

The tenants initially claimed for bug treatment services in the amount of \$2,782.50, but they deducted the amount from rent payments and claimed it as emergency repairs. As stated earlier in these reasons, the tenants have not shown that they had a bedbug problem and I have not accepted their submissions that their symptoms were due to a bird mite infestation, I do not have evidence to prove that the thermal remediation process was an effective treatment for fleas; it is not mentioned in the tenant's documents and submissions as a suitable treatment and in any event I have found that the flea problem was not the responsibility of the landlord.

The *Residential Tenancy Act* defines emergency repairs as follows:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that the insect treatment performed at the tenants' request did not fall within the definition of emergency repairs and in any event that it was not the landlord's responsibility. I find that the tenants were not entitled to deduct the cost of the treatments from the rent payments for June and July and I find that the landlord is not liable to pay for the cost of those treatments.

The tenants testified that there was a serious septic leak, described, by the health authority in their report as a failing sewage system. They reported the problem to the landlord's agent by e-mail on June 12th. The tenant said that the smell of sewage

permeated the house and there was waste water and raw sewage in the yard and under the house. The tenants said their children were becoming sick from the fumes. The tenants testified that they moved out of the rental unit and stayed in a hotel because the rental unit was unliveable due to the odour in the house and the sewage in the yard. The tenants claimed their hotel expenses for the period from June 16, 2015 until July 16, 2015 in the amount of \$3,152.70. In addition they claimed \$300.00 for gas to travel to and from the rental property daily and \$500.00 for additional food expenses. The tenants continued to maintain their animals on the property. The tenants did not disclose the nature of their business, but they were apparently operating some form of home based business from the rental property, as well as keeping a significant number of animals presumably for commercial purposes, although the tenancy was considered to be a residential tenancy only. The tenants claimed a further \$2,000.00, said to represent loss of income: "due to stress and not able to market our small business." The tenants did not submit any documentary evidence in support of the claims for gas, food expenses or loss of income.

I accept the tenant's testimony and supporting documents as having established that the rental property became unfit for occupation after June 12, 2015 and I find that the tenants were justified in moving out for some period of time after June 12th. The landlord effected some repairs to the septic system on or about June 20th, but neither party supplied any additional report or documentary evidence to show that the problem was successfully fixed. In the absence of proof that the problem was satisfactorily resolved, I conclude that the tenants had a valid reason for choosing not to return to live at the rental property. I note that the tenants' attachment to the rental property was becoming more tenuous after the month of June because they were progressing towards the move to their new house and they were not interested in returning to the rental unit to resume their tenancy. The tenants continued to use the property for the purpose of keeping their animals. This was not a use contemplated by the tenancy agreement and I find that the tenants are not entitled to compensation for costs to travel to and from the property to look after their animals and I find that the landlord is not responsible for any of the tenants' income or business losses. I note as well that the tenants failed to provide any documents or evidence to substantiate such a claim.

I find that the tenants are not entitled to recover the amounts claimed for hotel expenses, because they have been granted a rent abatement for the period of the loss of use. I find that they are not entitled to any award for gas, additional food costs or for loss of income. Instead I find that the landlord is not entitled to rent for June or July and I find that the tenants are entitled to withhold their rent payments for June and July. The tenants continued to make partial use of the rental property during these two months and I find that the tenants have been adequately compensated for loss of use by the

actual withholding of rent payments for the months of June and July in the amount of \$2,782.50.

Conclusion

The tenancy has ended. There is no basis for the claim to cancel the Notice to End Tenancy or for an order to restrict the landlord's rights to enter the rental property and these claims are dismissed without leave to reapply. Save for an award in the form of a rent reduction for June and July in the amount of rent withheld by the tenants, their claims for a monetary award have been dismissed without leave to reapply. Because the tenants have been largely unsuccessful on this application, I decline to award the filing fee for this application.

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: September 1, 2015

Residential Tenancy Branch

