



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LAT, RR, FF, O

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for cause, for compensation for loss or damage under the Act, regulations or tenancy agreement, to authorize the Tenants to change the locks, allow the Tenants reduced rent while repairs are being completed or services are being provided as agreed, to recover the filing fee and for other considerations.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on February 5, 2016. The Tenant said the Landlord signed for the registered mail package on February 10, 2016. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to change the locks on the rental unit?
4. Are the Tenants entitled to a rent reduction while services or facilities are being restored?

Background and Evidence

This tenancy started on February 15, 2015 as a fixed term tenancy with an expiry date of August 14, 2015 and then continued on a month to month basis after August 14, 2015. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 and a pet deposit of \$475.00 both on February 9, 2015. A move in condition inspection report was completed but it was not signed by the parties.

The Tenants said they are requesting the 1Month Notice to End Tenancy for Cause dated January 26, 2016 be cancelled as the Landlord has not explained the reasons to the Tenants

and the Tenants have not been involved in any illegal activities. The Tenants said they have no police charges or actions against them and they are at a complete loss to understand why the Landlord has given these reasons to end the tenancy. As the Landlord did not attend the hearing the Landlord has given no testimony or justification for these claims.

Further the Tenants said they have requested repairs to the rental unit as the road, the spare room and the deck are all in need of repairs. The Tenants continued to say that they are unable to get tenant insurance because the rental unit needs the wood burning stove in the spare room inspected, the deck is dangerous and has no railing on parts of it and the private road into the rental unit has been unpassable until the Tenant purchased gravel and repaired the road. As a result the Tenants are making the following monetary claims:

- 1). Because the road was in disrepair the Tenants' truck slid off the road and the Tenants have an invoice for \$1,117.64 from ICBC to repair the truck. The Tenants submitted the estimate and photographs of the road and the damage to the truck.
- 2). The Tenants said they did not move into the unit until 7 days after the tenancy started so they are requesting a return of the rent for 7 days at the start of the tenancy in the amount of \$245.00. The Tenants said this is for the time of February 15, to February 22, 2015.
- 3). The Tenants continued to say they are also requesting \$292.50 for the road repairs that the Tenant made to the road to make the road passable. The Tenants submitted photographs of the road before and after the repairs.
- 4). Further the Tenants requested \$1,890.00 for the loss of the use of the spare room from October to April, because there is no heat in the room and it was too cold to use. The Tenant said the spare room and the connecting pantry make up 20% of the rental unit and he calculated 20% of the rent in the amount of \$210.00 for 9 months for a total of \$1,890.00.
- 5). In addition the Tenants said they have been unable to use the deck or get tenants insurance because the deck is in disrepair and there is no railing on part of the deck. The Tenants said the Landlord said he had the materials and he would repair the deck in a conversation the Landlord had with the female Tenant in March, 2015. The Tenants said the deck has not been repaired and they are requesting \$1,260.00 as compensation for the loss of use of the deck. The Tenants said they calculated the loss of the deck at 10% of the rental \$105.00 times 12 months in the amount of \$1,260.00.
- 6). The Tenants also requested to recover the filing fee of \$100.00 if they are successful.

The Tenants said their total monetary claim is for \$4,905.00 and they are requesting the Notice to End Tenancy be cancelled as the Tenants said there are no grounds for it.

Analysis

I find the Landlord was properly serviced the Notice of Hearing and the hearing package and the Landlord chose not to attend the hearing to provide testimony and evidence to support the Notice to End Tenancy for Cause dated January 26, 2016. Consequently, I find from the undisputed testimony of the Tenants there is no grounds provided to the hearing to support the 1 Month Notice to End Tenancy for Cause dated January 26, 2016. I order the Notice to End Tenancy dated January 26, 2016 to be cancelled and the tenancy is ordered to continue as agreed in the tenancy agreement.

Section 27 of the Act says: (1) A landlord must not terminate or restrict a service or facility if:

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Section 32 of the Acts says: (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.

The Tenants gave undisputed testimony that the Landlord was told about the repair issues at the rental unit and the Tenants said the Landlord disregarded the issues. The Tenant said the road was not correctly maintained and this was the Landlord's responsibility. As well the spare room was not heated nor was the wood stove inspected as requested by the Tenant. The Tenants continued to say the Landlord disregarded their requests to repair the deck and railing on the deck to bring the deck up to safety standards. The Tenant said that because of these items they could not get tenants insurance and these issues devalued their tenancy.

I find from the Tenants testimony and submitted written evidence that the road in to the property is an essential services or facility of the tenancy and it is the Landlord's responsibility to maintain the road. The tenancy agreement says the Tenants are responsible for snow remove on the road but there is nothing mentioned about road maintenance therefore the maintenance of the road is the Landlord's responsibility. The Tenants have submitted photographic evidence that shows the road is not maintained. Consequently I find the Tenants have established grounds to prove the Landlord is responsible for the Tenants truck sliding off the road. As a result I award the Tenant \$1,117.64 which is the estimate from ICBC for the repairs of the truck.

Further I award the Tenant \$292.50 for the repair work he did to the road to make the road usable and safe.

With regard to the Tenants claim for \$1,890.00 for the loss of use of the spare room and pantry because the rooms were too cold to use; I find the Tenants have established grounds to show the rooms were of limited use to the Tenants, but the Tenants still had use of the space for storage or other uses that do not require living temperatures. Consequently I award the Tenants $\frac{1}{2}$ their claim of $\$1,890.00 / 2 = \945.00 for the limited use of the spare room and pantry.

Further I have viewed the photographs submitted by the Tenants showing the deck and the railings. Although the decking is older and the some of the railings may be in need of repair it is clear that the deck is useable and there is a railing on parts of the deck in the pictures. Consequently I find that the Tenants have not met the burden of proof required to show that the deck devalued the tenancy by \$1,260.00. I find the condition of the railings have devalued the tenancy, but not to the extent of prohibiting the Tenants from using parts of the deck. I award the Tenants $\frac{1}{2}$ of their claim in the amount of $\$1,260.00 / 2 = \630.00 .

Further pursuant to Sections 32 and 65 of the Act I order the Landlord to repair the deck and railings to the standard building code, to provide heat and to complete an inspection of the heat sources in the spare room as well I order the Landlord to maintain the road adequately. To ensure this issues are addressed I order the Tenants to reduce the rent paid by \$250.00 per month for each month that all the maintenance work is not completed. The rent reduction is from \$1,050.00 to \$800.00 per month until the Landlord has repaired the deck and railing, provided heat in the spare room and maintained the road into the property.

Further the Tenants have requested a rent reimbursement for February 15, 2015 to February 22, 2015 the date they moved in. The Tenancy Agreement says the tenancy started on February 15, 2015; therefore the Tenants are responsible for the rent from February 15, 2015 whether or not they moved into the unit. I dismiss the Tenants' request for a \$245.00 rent reimbursement.

The Tenants have also requested to change the locks on the rental unit, but the Tenants did not present testimony or evidence to support this claim; therefore I dismiss the Tenants request to change the lock on the rental unit.

As the Tenants have been successful in this matter I order the Tenants to recover the filing fee of \$100.00 from the Landlord. The Tenants will receive a monetary Order for the following:

Truck Repairs	\$1,117.64	
Repairs to the road	\$ 292.50	
Loss of use of spare room	\$ 945.00	
Loss of use of part of the deck	\$ 630.00	
Filing fee	<u>\$ 100.00</u>	
Amount Owing		<u>\$3,085.14</u>

Conclusion

The 1 Month Notice to End Tenancy for Cause dated January 26, 2016 is cancelled and the tenancy is ordered to continue as stated in the tenancy agreement.

The Tenants have received a monetary order for \$3,085.14 as compensation for loss of services and facilities provided for in the tenancy agreement.

The Tenants are ordered to reduce the rent from \$1,050.00 to \$800.00 until the Landlord repairs the deck and railing, restores heat to the spare room and pantry and maintains the road.

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: March 21, 2016

Residential Tenancy Branch