



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OP, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On October 16, 2015 the Landlords filed an Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, a monetary Order for a monetary Order for unpaid rent or utilities, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. The rental unit has been vacated and there is, therefore, no need to consider the application for an Order of Possession.

The Agent for the Landlord stated that on October 28, 2015 the Landlords' Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlords submitted to the Residential Tenancy Branch on October 28, 2015 were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 06, 2016 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on April 06, 2016 the Tenants' Application for Dispute Resolution and the Notice of Hearing were sent to the Landlords, via registered mail. She stated that it was also personally served to the Landlord on April 08, 2016. The Landlords acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 13, 2016 the Landlords submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch, in which they increased the amount of their monetary claim to \$4,285.95. The Agent for the Landlord stated that this document was sent to the Tenants on April 13, 2016, via registered mail. The Tenants acknowledged receipt of this document and I find that the Landlords Application for Dispute Resolution has been amended. The female Tenant stated that the Tenants were prepared to respond to the additional claims made in the Amendment to an Application for Dispute Resolution.

On April 14, 2016 the Landlords submitted 4 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted to the Tenants' door on April 25, 2016. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On April 18, 2016 the Tenants submitted 118 pages of evidence and a USB device to the Residential Tenancy Branch. The female Tenants stated that this evidence was personally served to the Landlords on April 18, 2016. The Landlords acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulates that a copy of the amended application must be served on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing. The rule further stipulates that an amended application must be clearly identified and be provided separately from all other documents.

The Tenants did not submit an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch and I therefore find that they have not amended their original claim to include anything other than their claim of \$600.00, which represents the return of their security deposit.

In the large package of evidence the Tenants submitted to the Residential Tenancy Branch on April 18, 2016 the Tenant submitted a twelve-page Monetary Order Worksheet the outlines a monetary claim of \$25,000.00. I find that this Monetary Order Worksheet does not serve to amend the Tenant's Application for Dispute Resolution, in part, because it is not the proper form for amending an Application and, in part, because it was included within a large evidence package and was not provided separately from all other documents.

As the Tenants have not properly amended their Application for Dispute Resolution to increase their claim from \$600.00 to \$25,000.00, I refuse to consider any claims other than the original claim for \$600.00. The Tenants retain the right to file another Application for Dispute Resolution seeking a resolution to issues not addressed at these proceedings.

Preliminary Matter #2

The Landlords claimed \$661.50 for damage to the walls, bathroom fan, baseboard, and flooring. The Landlords provided an invoice, in the amount of \$661.50, for repairing these items.

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's dispute.

I find that the claim for damages is too broad, in that it does not specifically identify the amount the Landlords are claiming for repairing the walls; the amount the Landlords are claiming for repairing the baseboards; the amount the Landlords are claiming for repairing the flooring; and the amount the Landlords are claiming for repairing the bathroom fan.

I find that the lack of these specific details makes it difficult for the Tenants to respond to these claims, as the Tenants are denied the opportunity to determine if the individual amounts claimed are reasonable prior to the hearing.

I therefore dismiss the Landlords' application for compensation for claims to damages to the rental unit, with leave to reapply on that specific issue.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and for unpaid rent and utilities?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on May 01, 2015;
- the tenancy was for a fixed term, the fixed term of which ended on April 30, 2016;
- the Tenants agreed to pay monthly rent of \$1,200.00 by the first day of each month;
- the Tenants paid a security deposit of \$600.00;
- a condition inspection report was completed at the beginning and the end of the tenancy;
- the Tenants provided the Landlord with a forwarding address, in writing, on September 29, 2015;
- the Tenants did not give the Landlords written authority to retain any portion of the security deposit; and
- the Landlords did not return any portion of the security deposit.

The Landlords are seeking compensation, in the amount of \$2,400.00, for lost revenue for the months of October and November of 2015. In regards to this claim the Landlords and the Tenants agree that:

- on September 29, 2015 the Tenants informed the Landlords, in writing, that they intend to vacate the rental unit on September 30, 2015;
- in the notice of September 29, 2015 the Tenants informed the Landlords that they are vacating because the premises has mould and the heat is not working;
- in the notice of September 29, 2015 the Tenants acknowledged that the Landlords have had someone look at the windows in an attempt to remediate the mould issue and that someone is scheduled to "look at" the heat on September 30, 2015;
- the Tenants did not inform the Landlords of their concerns with mould or heat, in writing, prior to September 29, 2015; and
- the rental unit was vacated on October 10, 2015.

The female Tenant stated that the Tenants verbally reported concerns with mould to the Landlords in early September of 2015 and that they vacate the rental unit because they believed the mould represented a serious health risk.

The Agent for the Landlord stated that:

- the Tenants verbally reported concerns with mould to the Landlords in the latter part of September of 2015;
- they reported concerns with wet drywall in the bathroom in August of 2015;
- the drywall was repaired shortly after it was reported;
- there was no evidence of mould when the drywall was repaired;
- after the rental unit was vacated the Landlord hired a cleaner to clean any visible mould; and
- there has been no evidence of mould since the Tenants vacated the unit.

The Tenants submitted a copy of an inspection report completed by a home inspection company on October 06, 2015, which the female Tenant contends supports the Tenants' submission that it was not healthy to occupy the rental unit because of the presence of mould.

The Agent for the Landlord stated that the rental unit was posted on a popular website shortly after the unit was vacated; that ads were also posted on various bulletin boards; and that the rental unit was not re-rented until May 01, 2016.

The Landlords are seeking \$1,119.45 in unpaid utilities. The Landlords and the Tenant agree that:

- at the start of the tenancy the Tenants agreed to pay a portion of the rent, depending on the number of people occupying the Landlord's rental unit;
- for the May of 2015 the Tenants were required to pay 4/5 of all utility bills; and
- for the remainder of the tenancy the Tenants were required to pay 4/6 of all utility bills.

The Landlords submitted a hydro bill, in the amount of \$154.78, for the period between April 30, 2015 and June 26, 2015. The parties agree that the Tenants have not paid any portion of this bill.

The Landlords submitted a gas bill, in the amount of \$58.90, for the period between July 03, 2015 and August 04, 2015. The parties agree that the Tenants have not paid any portion of this bill.

The Landlords submitted a gas bill, in the amount of \$50.19, for the period between August 04, 2015 and September 02, 2015. The parties agree that the Tenants have not paid any portion of this bill.

The Landlords submitted a hydro bill, in the amount of \$133.26, for the period between August 26, 2015 and October 28, 2015. The parties agree that the Tenants have not paid any portion of this bill.

The Landlords submitted a metered utility bill, in the amount of \$467.50, for the period between July 01, 2015 and September 30, 2015. The parties agree that the Tenants have not paid any portion of this bill.

The Landlords submitted a gas bill, in the amount of \$72.93, for the period between September 02, 2015 and October 02, 2015. The parties agree that the Tenants have not paid any portion of this bill.

The Landlords submitted a gas bill, in the amount of \$61.75, for the period between June 03, 2015 and July 03, 2015. The Agent for the Landlord stated that the Tenants have not paid any portion of this bill. The female Tenant stated that sometime in August of 2015 the Tenants gave the Landlords a cheque, in the amount of \$40.00, which was to be applied to this and other utility bills. The Agent for the Landlord stated that the Tenants did not make a payment of \$40.00 in August for utilities.

The Landlords submitted a metered utility bill, in the amount of \$299.90, for the period between April 01, 2015 and June 30, 2015. The Agent for the Landlord stated that the Tenants have not paid any portion of this bill. The female Tenant stated that on September 08, 2015 the Tenants gave the Landlords a cheque, in the amount of \$200.00, which was to be applied to this and other utility bills. The Agent for the Landlord stated that the Tenants did not make a payment of \$200.00 in September for utilities.

The Landlords submitted a hydro bill, in the amount of \$174.06, for the period between June 27, 2015 and August 27, 2015. The Agent for the Landlord stated that the Tenants have not paid any portion of this bill. The female Tenant stated that on September 15, 2015 the Tenants gave the Landlords a cheque, in the amount of \$132.51, which was to be applied to this and other utility bills. The Agent for the Landlord stated that the Tenants did not make a payment of \$132.51 in September for utilities.

The Landlords submitted a gas bill, in the amount of \$91.60, for the period between May 04, 2015 and June 03, 2015. The Agent for the Landlord stated that the Tenants have not paid any portion of this bill. The female Tenant stated that sometime in July of 2015 the Tenants gave the Landlords a cheque, in the amount of \$91.60, which was to be applied to this utility bills. The Agent for the Landlord stated that the Tenants did not make a payment of \$91.60 in September for utilities.

The Landlords and the Tenant agree that on October 03, 2015 the Tenants gave the Landlords a cheque, in the amount of \$295.00, for utility charges. The parties agree that this cheque was subsequently cancelled and was not replaced.

The Landlords are seeking compensation of \$105.00 for cleaning at the end of the tenancy. The Agent for the Landlord stated that a variety of areas required cleaning at the end of the tenancy. When asked for specifics he said that the oven required cleaning; the inside and the outside of the cupboards needed wiping; the floors required cleaning; and mould need to be cleaned from inside one cupboard.

The female Tenant stated that the rental unit was left in clean condition at the end of the tenancy.

The Landlords submitted 8 black and white images of the rental unit, which are not good quality images. The Agent for the Landlord stated that these photographs were taken at the end of the tenancy.

The Tenants submitted a USB device which contains several images of the rental unit. The female Tenant stated that these images were taken at the end of the tenancy.

Analysis

On the basis of the undisputed evidence I find that the Landlords and the Tenants entered into a fixed term tenancy agreement, the fixed term of which was to end on April 30, 2016, and that the Tenants agreed to pay monthly rent of \$1,200.00.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. There is no evidence that the Landlords gave the Tenants notice to end this tenancy.

Section 45(2) of the *Act* authorizes a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Even though the Tenants gave the Landlords written notice of their intent to end the tenancy on September 30, 2015, I could not conclude that the Tenants served proper notice to end the tenancy as the Tenants did not have the right to end the tenancy prior to the end of the fixed term of the tenancy.

As neither party gave proper written notice to end this tenancy, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As the Tenants vacated the rental unit prior to April 30, 2016, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that this tenancy ended when the Tenants vacated the rental unit on October 10, 2015.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. A tenancy agreement is frustrated where, without the fault of either party, the agreement becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the agreement as originally intended is now impossible. Where an agreement is frustrated, the parties to the agreement are discharged or relieved from fulfilling their obligations under the agreement.

The test for determining that a tenancy agreement has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the agreement. A tenancy agreement cannot be considered frustrated in circumstances where a landlord has the ability to rectify a problem with a rental unit, regardless of the cost or inconvenience of that remedy.

I find there is insufficient evidence to show that the presence of mould in the rental unit served to frustrate this tenancy agreement. In reaching this conclusion I was heavily influenced by the inspection report completed by a home inspection company on October 06, 2015. The author of this report does not recommend that the rental unit be vacated, although the author refers to the need for "cleanup activities" and he notes that the bathroom fan is insufficient. The author further recommends that a High Efficiency Particulate Air filtration device be installed. This causes me to conclude that the problem with the mould in this unit could be remediated.

In determining that there was insufficient evidence to show that the presence of mould in the rental unit frustrated this tenancy agreement I was also influenced by the undisputed testimony that after this tenancy ended the visible mould was cleaned and has not returned. This further convinces me that the problem with the mould could be remediated.

In determining that there was insufficient evidence to show that the presence of mould in the rental unit frustrated this tenancy agreement I was also influenced by the absence of any documentary evidence from a medical practitioner that correlates the mould with any health conditions being experienced by the occupants of the rental unit.

I find that this tenancy agreement was not frustrated and that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenants did not comply with section 45(2) of the *Act* when they vacated the rental unit prior to the end of the fixed term of the tenancy agreement.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord suffers a loss as a result of the tenant failing to comply with the *Act*. On the basis of the evidence of the Landlord and in the absence of evidence to the contrary, I find that in spite of reasonable efforts to find a new tenant, the Landlords experienced several months of lost revenue as a result of the Tenants breaching section 45(2) of the *Act*.

I therefore find that the Tenants must compensate the Landlords for the lost revenue experienced by the Landlords in October and November of 2015, in the amount of \$2,400.00. Although the evidence shows that the Landlords continued to lose revenue after November 30, 2015, I have not awarded compensation for any additional months as the Landlords did not apply for additional compensation.

In adjudicating the claim for lost revenue I considered section 45(3) of the *Act* which stipulates, in part, that if a landlord has failed to comply with a material term of the tenancy agreement and the landlord has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Even if I concluded that the presence of mould constituted a breach of a material term of a tenancy agreement, I would not conclude that the Tenants had the right to end this tenancy pursuant to section 45(3) of the *Act*. As the Tenants gave written notice of their concerns with mould on September 29, 2015 and they vacated the rental unit on October 10, 2015, I find that they did not give the Landlords a reasonable opportunity to remediate the mould.

On the basis of the undisputed evidence, I find that the Tenants were required to pay 4/5 of all utility bills for May of 2015 and 4/6 of all utility bills.

On the basis of the undisputed evidence I find that the Tenants did not pay any portion of the hydro bill for \$154.79, I find that the Tenants remain obligated to pay 4/5 of this bill for the period between April 30, 2015 and May 30, 2015 and 4/6 of the remainder of the bill. I therefore find that the Tenants must pay 4/5 of 32/58th of this bill and 4/6 of 26/58th of the bill. 32/58th of the bill is \$85.40. The Tenants must pay 4/5th of this portion of the bill, which \$68.32. 26/58th of the bill is \$69.38. The Tenants must pay 4/6th of this portion of the bill, which \$46.25.

On the basis of the undisputed evidence I find that the Tenants did not pay any portion of the gas bill for \$58.90, I find that the Tenants remain obligated to pay 4/6 of this bill, which is \$39.27.

On the basis of the undisputed evidence I find that the Tenants did not pay any portion of the gas bill for \$50.19, I find that the Tenants remain obligated to pay 4/6 of this bill, which is \$33.46.

On the basis of the undisputed evidence I find that the Tenants did not pay any portion of the hydro bill for \$133.26, I find that the Tenants remain obligated to pay 4/6 of the electricity consumed while they were still living in the rental unit during this billing period. As the Tenants vacated this rental unit on October 10, 2015 and the billing period for this bill was from August 28, 2015 to October 28, 2015, I find that the Tenants only need to pay for 44 days of this 62 day billing period. 44/62 of this bill is \$94.57. The Tenants must pay 4/6th of this portion of the bill, which \$63.05.

On the basis of the undisputed evidence I find that the Tenants did not pay any portion of the metered utility bill for \$467.50, I find that the Tenants remain obligated to pay 4/6 of this bill, which is \$311.66.

On the basis of the undisputed evidence I find that the Tenants did not pay any portion of the gas bill for \$72.93, I find that the Tenants remain obligated to pay 4/6 of this bill, which is \$48.62.

I find that the Tenants were obligated to pay 4/6 of the gas bill for the period between June 03, 2015 and July 03, 2015, in the amount of \$61.75. I find that the Tenants have submitted insufficient evidence to show that they paid \$40.00 toward this bill and I therefore find that they still owe \$26.67.

I find that the Tenants were obligated to pay a portion of the metered utility bill for the period between May 01, 2015 and June 30, 2015. I find that they were not obligated to pay any portion of the bill between April 01, 2015 and April 30, 2015, as they were not occupying the rental unit during that month. The Tenants were, therefore, only obligated to pay for 61 days of this 91 day billing period. 61/91 of this \$299.90 bill is \$201.03.

I find that the Tenants were obligated to pay 4/5 of \$299.90 metered utility bill for the month of May of 2015 and 4/6 of the bill for the month of June of 2015. As there are 31

days in May, I find that that the charges for May would be 31/91 of the entire bill, which is \$102.16. As the Tenants' portion of the bill for this month is 4/5 of \$102.16, I find that they were obligated to pay \$81.73.

I find that the Tenants were obligated to pay 4/6 of \$299.90 metered utility bill for the month of June of 2015. As there are 30 days in June, I find that that the charges for June would be 30/91 of the entire bill, which is \$98.87. As the Tenants' portion of the bill for this month is 4/5, I find that they were obligated to pay \$79.09.

I find that the Tenants have submitted insufficient evidence to show that they paid \$200.00 toward the metered utility bill of \$299.90 and I therefore find that they still owe \$160.82 for this bill.

I find that the Tenants were obligated to pay 4/6 of the hydro bill for the period between June 27, 2015 and August 27, 2015, in the amount of \$174.06. I find that the Tenants have submitted insufficient evidence to show that they paid \$132.51 toward this bill and I therefore find that they still owe \$116.04 for this bill.

I find that the Tenants were obligated to pay 4/5 of \$91.60 gas bill for the period between May 04, 2015 and May 31, 2015. As there are 28 days between May 04, 2015 and May 31, 2015, I find that the charges for this period would be 28/31 of the entire bill, which is for a period of 31 days. 28/31 of this bill is \$82.74. As the Tenants' portion of the bill for these 28 days is 4/5 of \$82.74, I find that they were obligated to pay \$66.19.

I find that the Tenants were obligated to pay 4/6 of \$91.60 gas bill for the period between June 01, 2015 and June 03, 2015. As there are 3 days between June 01, 2015 and June 03, 2015, I find that the charges for this period would be 3/31 of the entire bill, which is for a period of 31 days. 3/31 of this bill is \$8.86. As the Tenants' portion of the bill for these three days is 4/6 of \$8.86, I find that they were obligated to pay \$5.91.

I find that the Tenants have submitted insufficient evidence to show that they paid \$91.60 toward the gas bill of \$91.60 and I therefore find that they still owe \$72.10 for this bill.

In concluding that there was insufficient evidence to conclude that the Tenants made any of the aforementioned utility payments they claim to have made I was heavily influenced by the absence of evidence, such as the cancelled cheque or a bank statement, that corroborates the Tenants' submission that they paid these amounts by cheque or that refutes the Landlords' submission that the payments were not made.

When one party disputes an allegation that a payment was not made and the party contends they made a payment by cheque, I find it reasonable to expect the party to produce a cancelled cheque or similar documentation that corroborates that claim. I find that to be particularly true in circumstances such as these, where a Landlord has no reasonable means of establishing that a payment by cheque was not received.

In adjudicating this claim I have placed no weight on the undisputed evidence that on October 03, 2015 the Tenants gave the Landlords a cheque, in the amount of \$295.00, for utility charges and that the cheque was subsequently cancelled. As this cheque could not be cashed, it does not represent a payment.

Section 37(2) of the *Act* requires tenants to leave a rental unit in reasonably clean condition at the end of a tenancy. The *Act* does not require a rental unit to be left in pristine condition. After viewing the images submitted by both parties, I find that the rental unit was left in reasonable condition. I therefore dismiss the Landlords' claim for cleaning the rental unit.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing an Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenants security deposit of \$600.00 in partial satisfaction of the money owed. As the Landlords have established a monetary claim, I dismiss the Tenants' application to recover security deposit and to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$3,453.34, which includes \$2,400.00 in lost revenue; \$1,003.34 in utilities, and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. After deducting the \$600.00 security deposit I grant the Landlords a monetary Order for \$2,853.34. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced 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: May 05, 2016

Residential Tenancy Branch