



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, CNL, MNDC, FF

For the landlords – OPL, MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy; to cancel a Two Month Notice to End Tenancy for landlords use of the property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlords to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for landlords use of the property; for a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession and the tenants withdraw their application for more time and to cancel the Two Month Notice to End Tenancy.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlords to comply with the Act, Regulations or tenancy agreement?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on June 07, 2010. Rent for this unit was \$1,200.00 per month. The tenants testified that they paid a security deposit of \$600.00 and a pet deposit of \$600.00 on June 07, 2010 and this is documented on their tenancy agreement. The tenants testified that they were both named as tenants on this agreement. The landlords testified that they have mislaid their copy of the tenancy agreement and are not sure how much security or pet deposit the tenants paid or if both tenants were named as co-tenants on the tenancy agreement. Neither party provided a copy of the tenancy agreement in documentary evidence. The tenants agreed to forward a copy of the tenancy agreement to the landlords to support any future claim concerning the security and pet deposits.

The tenant's application

The tenants testified that the landlords' agent served them with a Two Month Notice to End Tenancy on June 30, 2015 in person. The tenants referred to the copy of this Notice provided in documentary evidence. The Notice provides one reason to end the tenancy, that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Notice had an effective date of August 31, 2015.

The tenants testified that they vacated the rental unit in accordance with this Notice on August 31, 2015. The tenants testified that prior to being served this Notice the landlord had been trying to sell the unit. the tenants testified the unit was for sale when they first moved in and then was taken off the market. It was put back on the market a few years later and then removed again. In 2015 it was put back on the market. The tenants testified that the landlords had never been to the unit since the start of the tenancy and the tenants always dealt with the landlords' agents. The first agent who signed the

tenancy agreement with the tenants has since passed away and the landlords' realtor has been acting as their agent since that time.

The tenants testified that after they vacated the rental unit the landlords did not take possession of the unit and the tenants later determined that the unit had been sold. The tenants testified that the landlords issued the Two Month Notice in bad faith and never had any intention of living in the unit; it was simply a way to get the tenants out so they could sell the unit without tenants. Due to this the tenants seek compensation equal to two months' rent to an amount of \$2,400.00 as permitted under the *Act*.

The tenants testified that they seek an Order for the landlord to comply with the *Act* regarding the issuing of the Two Month Notice for the correct reason.

The landlords disputed the tenant's claim for compensation. The landlords testified that they purchased the property in 2007 as an investment property. After a few years they sent a realtor round to appraise the property to see if it had appreciated. At that time that realtor said the property was in a poor condition and would not sell easily. The property was put on the market but it did not sell. The landlords testified that in 2015 they attempted to sell the property again and they informed their realtor that if it did not sell they would move into the property. The house was put on the market but due to the poor condition the tenants kept the house in it could not sell for the price the landlords expected. The house was dirty, there was garbage everywhere, piles of wood, salvage items from vehicles, stored vehicles and the tenants had sublet the basement.

The landlords testified that when the property did not sell they made the decision to renovate it and use it for the family summer house. The tenants were then served the Two Month Notice in good faith. Shortly after the tenants were served the Two Month Notice the landlord's mother became ill in Europe and the landlords had to go and help their mother who had to have a hip replacement. Due to this the landlords were not around at the end of the tenancy. The landlords referred to their documentary evidence showing their flight itinerary to Europe.

The landlords testified while they were in Europe their realtor contacted them to say one of the previous viewers of the property had viewed it again after the tenants had vacated and the property had been cleared and cleaned and now wanted to make an offer on the property. The landlords testified that they had to make a decision whether to spend \$100,000.00 on the property to renovate it or sell it for a lower price. The landlords decided that selling it was the better option for them and the unit was sold with possession for the end of October, 2015.

The landlords testified that when the Two Month Notice to End Tenancy was issued and served upon the tenants they did act in good faith as at that time their intention was to renovate and use the property for them and their family.

The landlords call their witness DP. DP was the landlord's realtor and agent. DP testified that he listed the property on June 09, 2015. They had multiple viewings but the unit did not show well and was kept in a poor condition. Further to this the tenants followed the realtor and prospective purchasers around and made comments about the property. The viewings all went poorly. DP testified that when the property did not sell the landlords informed DP that they intended to renovate the property instead and move into it. Therefore, at the time DP served the Two Month Notice to the tenants this was the landlords' true intention.

DP testified that the landlord's mother was taken ill and the landlords had to fly to Europe to tend their mother; at that time DP still had a contract with the landlords to sell the house and this listing did not expire until the end of September so DP continued to market the property. Previous people who had viewed the property while the tenants were living there came back for a second viewing after the tenants had vacated and those people made an offer on the property. It was then decided that the landlords would sell the property.

The landlords' application

The landlords testified that they did not view the property at the end of the tenancy and their testimony is based on what they were told by their witness who was their realtor and agent for this tenancy. The landlords testified that they did have to pay \$800.00 to have the unit cleaned and \$2,500.00 to have garbage removed from the unit and property. The tenants referred to their documentary evidence showing the email transfers made to their agent for these amounts.

The landlords witness DP testified that inside the property it was horrible he had to wade through clothing and garbage and the appliances were in terrible condition and had to be thrown away. Outside there were used car parts such as seats, wheels, trims, radiators and a transmission. The tenants did remove the vehicles from the property but not all the car parts. There was also a great deal of other junk and garbage left on the property. DP testified he had to hire a man to clear the property and he removed tonnage from the property. DP testified he also hired a lady to clean the inside of the house and referred to an email from this cleaner who stated she had never seen anything like this in all her years of cleaning.

DP testified he does not recall getting invoices from the handyman or cleaner but will look to see and forward those on to the tenants, the landlords and the Residential Tenancy Branch. The tenants agreed to accept these documents by email.

The landlords testified that they paid the costs incurred for the work done to the property based on the emails from the handyman and cleaner.

The tenants cross examine the landlords' witness and ask DP what vehicle parts were removed by the handyman as they are not shown in the photographic evidence and the tenants removed all vehicle parts at the end of the tenancy. DP responded that he saw a transmission being hoisted onto a trailer and a radiator, some kind of refrigerated box with a cooling system and some rims and tires. DP testified that there was also a mattress and large piles of wood. The tenant asked DP why he did not take pictures of the car parts he states they removed when he has pictures of other items. DP responded that he just took general pictures as the yard is over half an acre and stuff was all over the property.

The landlord testified that they spent this much money getting the place cleaned up and does not understand why it is now important to discuss individual items. The tenants had two months to get the place cleaned up and they left it till the last minute and they did not have time to remove all their belongings, clean the unit and remove the junk.

The tenants agreed that they did leave some items at the property. They offered to come back and finish cleaning up the next day but DP said they only had until midnight and they were not allowed to come back to the property.

The tenants testified that the house was not completely cleaned by the tenants at the end of the tenancy. They had been working hard to get everything out of the unit but did not have a new place to put it in until the last minute so everything had to go into storage. The tenants testified that in the landlords' documentary evidence the email from his cleaner states that she scraped the poolroom floor; however, this room was an area the tenants did not have access to during their tenancy and it was blocked off by the washer/dryer. The cleaner's email also referred to a cat urine soaked carpet. The tenants testified that their cats were outdoor cats only and did not access the house to urinate on the carpet. As these form part of the cleaning bill this area should not be the tenant's responsibility. The tenant referred to the landlord's documentary evidence about yard trash and two trees that were removed. The tenants testified that they did not take out any trees and there was a huge pile of concrete already at the property when they moved in.

The tenants testified that when they moved into the unit no move in condition inspection report was done with the tenants and the landlords' realtor/agent at that time informed the tenants that if they wanted the house they would have to clean it. The tenants testified they believed the house had been standing empty for a few years and it was in a bad condition and very dirty. The tenants spent days cleaning the unit before they could move in. The kitchens, the bathrooms, the floors, the walls all had to be cleaned. Even the fridge was moved to clean under it. The tenants also found mice in the unit. At the end of the tenancy they only had time to clean the basement they had access to and the garage.

The tenant testified that the house was in a bad shape when the viewings took place because the tenants were at work and did not have time to clean up before a viewing. The tenants disputed that they said anything to prospective buyers and only answered questions about bills and heat. The tenants testified that the landlords have shown little interest in the house and all the repairs expect one have been done by the tenants.

The tenants called their witness LR. LR is a subtenant of the tenants. LR testified that she was present when the tenants moved into the house. The house was filthy and the tenants, LR and the tenants' mother all helped to clean the house before they could move in. The toilet for example had sat for two years without being flushed and was very brown. The walls, ceiling fans, stove, floors were all cleaned and LR testified that she used her carpet cleaner to clean the carpets. The stovetop also had burnt on food. LR testified that she cleans for a living for the past 15 years and although they didn't do all the cleaning when they moved out it was certainly not clean when they moved in.

The landlord cross examined LR and asked in which room she cleaned the carpets. LR responded in the basement room with the fireplace. The landlords ask which fridge did you clean as all the appliances were new and the carpet was changed to linoleum. LR responded that she cleaned the stove top not fridge and she cleaned a carpet in the basement and the master bedroom.

The landlord testified that they had done a major renovation on the unit before the tenants moved in, the entire house was painted and flooring was replaced with laminate. The landlord testified that the house did not sit empty for two years as they had a previous tenant living there.

The tenant testified that the landlords' previous agent informed the tenants that the house had been empty for two years and the water was turned off to the house.

The landlord testified that he does not see the point of bringing up things that happened five years ago and the landlords did not see the house then but the tenants did not make any complaints either. The landlords testified that the pool room was not to be used by the tenants and the door was secured for insurance purposes. The tenants' witness testified that she used the basement room with the fireplace.

The tenants disputed that the pool room was ever used. If the floor was dirty it happened because the roof sloped and could have leaked into that room.

The landlord testified that he does not know who cut the trees down and does not recall concrete being at the property when the tenants moved in. The landlords agreed that they may have been at the property four or five years ago.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses.

The tenant's application

The tenants seek compensation under s. 51 of the Act because the landlords did not use the property for the reason given on the Two Month Notice and sold the property shortly after the tenants vacated. The tenants have raised the issue of the landlords' good faith intent when they served the Two Month Notice to the tenants. I refer the parties to the Residential Tenancy Policy Guidelines #2 which states, in part, that:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy ... as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

When the good faith intent of the landlord is called into question this normally relates to the cancelling of the Two Month Notice to End Tenancy and not issues arising under s. 51 of the *Act*; however, in this matter I consider it a fundamentally important matter to establish whether or not the landlords did issue this Notice in good faith to decide if the tenants are entitled to compensation under s. 51 of the *Act*.

With this in mind I find it is clear from the evidence presented that the landlords' primary intent was to sell the unit. When the landlords were unable to sell the unit they have stated that they then intended to renovate and occupy the unit; however, at this time they were still in a contract with the realtor to market the unit. If the landlords truly intended to renovate and use the unit for a summer home this decision should not have been made until after the contract with the realtor ended in case he was still able to sell the unit. It is unfortunate that in the middle of this the landlords had to leave the country; however, they should have known their realtor was still actively marketing this unit and subsequently sold it.

I am not persuaded that it was the landlords intent to reside in this unit at the time the Notice was issued. There were problems with the way the tenants kept the unit and it did not show well which leads me to again question the validity of the reason for ending the tenancy and whether or not this was motivated in an attempt to evict the tenants to have the unit shown in a better light.

Consequently I refer the parties to s. 51(2) of the *Act* which states:

(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I therefore uphold the tenant's application to recover the amount of **\$2,400.00** pursuant to s. 51(2) of the *Act*.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement; As this tenancy has ended I am not prepared to issue Orders for the landlords to comply with the *Act* as Orders for a landlord to comply with the *Act* would no longer be enforceable when a tenancy has ended.

The landlords' application

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find that neither the landlords nor their agent conducted a move in condition inspection of the property at the start of the tenancy and therefore there is insufficient evidence from the landlords to show what condition the unit was in when the tenants moved into the property. The tenants and their witness have testified that it was dirty and that they spent days cleaning it, the landlords testified that it was newly renovated and freshly painted; however, they have presented insufficient evidence to corroborate this. While I accept the tenants did not leave the rental unit in a reasonably clean condition when they vacated the unit I am not prepared to allow the landlords to

recover the cleaning costs. The landlords do not meet the burden of proof that the unit was in a clean condition at the start of the tenancy and by the landlord's own admission they did not see the rental unit at that time. The purpose of completing a move in condition inspection report is to provide evidence of the condition of the unit at the start of the tenancy so when a move out report is completed the details can be compared to determine what damage or cleaning is the tenant's responsibility. The landlords' application to recover \$800.00 for cleaning is therefore dismissed.

With regard to the landlords' application for the removal of garbage and junk; this is another matter, the tenants agreed that they did leave some junk and garbage at the property and there is some evidence to support this in the way of photographs and statements from the landlords' handyman and witness. However, the tenants testified that they removed all the car parts themselves from the property and the trees and concrete that were removed was either there at the start of the tenancy or was not placed there by the tenants. The tenants argued that they were not allowed to return to the property to clean up after the tenancy ended. Under the *Act* the tenants must vacate a rental unit by 1.00 p.m. on the last day of their tenancy and they must ensure all their belongings are removed from the rental unit including garbage or junk. The landlord does not have to allow tenants the opportunity to return to clean up after they have vacated.

The landlords' witness testified that he saw rims, tires, radiators and a transmission along with a refrigerated box and mattress being removed by the handyman. I further find the evidence presented in the form of an email from the handyman supports the witness's testimony that he removed scrap metal, furniture, piles of wood and car parts. I find I prefer the evidence of the landlords' witness that they did remove the car parts and a large number of other items. I am not persuaded; however, that trees or concrete blocks were the responsibility of the tenants and as such the tenants should not be charged for the removal of these items.

I allowed the landlords' witness to send in the invoice for the work done by this handyman after the hearing had ended. Having now viewed the invoice from the handyman I find it does not contain a complete list of all items removed and could well have included the two trees and concrete belonging to the landlords. I must therefore make some deductions for items removed that were not the tenants' responsibility and as such I award the landlords the amount of \$2,000.00.

As both parties' claims have merit I find each party must bear the cost of filing their own applications.

As both parties are entitled to a monetary award I have offset the landlords' award from that of the tenants. The tenants will receive a Monetary Order for the following amount pursuant to s. 67 of the Act:

Tenant's compensation - \$2,400.00

Landlord's compensation - \$2,000.00

Total amount due to the tenants - \$400.00.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. I have offset the amount of **\$2,000.00** from the tenant's monetary award.

I HEREBY FIND in favor of the tenant's monetary claim for \$2,400.00. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$400.00**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: June 22, 2016

Residential Tenancy Branch