



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for compensation for emergency repairs, and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on July 21, 2016 the Application for Dispute Resolution and the Notice of Hearing, were sent to the Landlords, via courier. The Landlord acknowledged receiving these documents and that he is representing the other Landlord that is named on the Application.

The Tenants submitted 18 pages of evidence to the Residential Tenancy Branch on July 25, 2016. The male Tenant stated that these documents were served to the Landlords with the Application for Dispute Resolution. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Tenants submitted 5 pages of evidence and 132 photographs to the Residential Tenancy Branch on December 30, 2016. The male Tenant stated that this evidence was mailed to the Landlords on December 29, 2016. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The Landlords submitted 18 pages of evidence to the Residential Tenancy Branch on December 30, 2016. The Landlord stated that these documents were mailed to the Tenants on December 30, 2016. The male Tenant acknowledged receiving 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.

Issue(s) to be Decided:

Are the Tenants entitled to compensation for making emergency repairs?
Are the Tenants entitled to compensation for cleaning the unit?
Are the Tenants entitled to a rent refund?
Are the Tenants entitled to compensation for moving costs?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on July 01, 2016;
- the fixed term of the tenancy ends on January 31, 2017;
- the tenants agreed to pay rent of \$1,500.00 by the first day of each month;
- rent was paid for July of 2016; and
- the tenants vacated the rental unit on July 10, 2016.

The male Tenant stated that on July 08, 2016 they verbally informed the Landlord that they were vacating the rental unit because they considered the rental unit uninhabitable. The Landlord stated that on July 10, 2016 the Tenants verbally informed him that they were vacating the rental unit. The parties agree that the Tenants did not inform the Landlord, in writing, of any deficiencies with the rental unit nor did they inform the Landlord, in writing, that they were vacating the rental unit.

The Tenants claimed compensation of \$40.57 for emergency repairs and \$44.93 for emergency repairs and cleaning supplies. In regard to the claim for emergency repairs the female Tenant stated that:

- on, or about, July 02, 2016 an arm in the back of the toilet broke;
- the damaged toilet flooded the bathroom;
- the Tenants telephoned the Landlord on several occasions regarding this repair, but were unable to make contact with him;
- the Tenants repaired the toilet after the Landlord did not respond to their calls;
- the claim for \$40.57 relates to parts purchased to repair the toilet;
- she cannot locate the receipt for this purchase, although she believes it was submitted in evidence;
- the claim for \$44.93 relates, in part, to additional parts purchased to repair the toilet;
- she cannot locate the receipt for this purchase, although she believes it was submitted in evidence;
- she believes that the part purchased from the \$44.93 claim cost approximately \$8.00;
- the Landlord was showed a copy of the receipt on July 04, 2016;
- the Landlord offered to reimburse them for the cost of the parts used to repair the toilet; and
- the Landlord has not compensated them for the repairs.

In regards to the claim for repairing the toilet the Landlord stated that:

- on July 04, 2016 the Tenants told him that they repaired the toilet after it flooded;
- they told him how much they paid to repair the toilet, via email;
- he is not certain if they ever gave him a copy of the receipt(s) for this repair; and
- on July 11, 2016 he gave them \$425.00, in cash, which was intended, in part, to compensate them for this repair.

The Tenants submitted a copy of a receipt, which totals \$40.57. \$18.99 of this receipt is for a toilet valve; a portion of the receipt is for caulking items; and \$6.90 is for cleaning supplies.

I was unable to find a receipt for \$44.93 which would correlate to the claim for this emergency repair.

The Tenants are seeking compensation, in part, because the rental unit was not clean at the start of the tenancy. The Tenants are seeking compensation for cleaning supplies in the amount of \$3.28, \$38.01, and an unspecified portion of \$44.93. They are also seeking compensation of \$1,090.00 for the 109 hours the Tenants and 3 other people spent cleaning the rental unit.

The Tenants submitted numerous photographs of the rental unit, which they contend represents the cleanliness of the rental unit at the start of the tenancy. The female Tenant stated that the rental unit had a very bad odour and that she and her two daughters developed health problems after living in the rental unit.

The Landlord stated that he did not view the rental unit at the start of the tenancy and he did not go to the unit until July 04, 2016. He stated that he does not, therefore, know whether the photographs accurately reflect the condition of the rental unit at the start of the tenancy. He stated that on July 11, 2016 he gave the Tenants \$425.00, in cash, which was intended, in part, to compensate them for cleaning the rental unit.

The female Tenant stated that the Landlord did offer to pay them some money for cleaning the rental unit; they could not agree on an amount to be paid; and no compensation was ever provided.

The Tenants are seeking compensation, which they refer to as a rent refund, in part, because there were rodents in the rental unit. The female Tenant stated that they based this conclusion on the significant amount of mouse droppings found in the rental unit. She stated that rodents were seen outside of the unit but none were seen inside the unit during the tenancy.

The Landlord stated that there was a problem with mice in the rental unit in January of 2016; that the problem was rectified in January of 2016; and he told the Tenants the any evidence of mice were likely left behind from the initial problem in January.

The Tenants are seeking compensation, which they refer to as a rent refund, in part, because there was an ant infestation in the rental unit. The female Tenant stated that:

- there was an ant colony under a staircase in the furnace room;
- tape had been used in various locations to control the ant infestation;
- the infestation was reported to the Landlord on July 02, 2016 or July 03, 2016;
- sometime between July 04, 2016 and July 04, 2016 she informed the Landlord that the problem still persisted;
- the Tenants used ant poison in an attempt to eliminate the infestation; and
- the poison was ineffective.

The Landlord stated that:

- the Tenants reported an ant infestation on July 04, 2016;
- when they reported the ant infestation they told him they were attempting to remedy the problem with poison;
- that he did nothing as he assumed the poison would be effective; and
- the problem was never discussed again after the initial report.

The Tenants submitted photographs of a large amount of ants in the furnace room. The Tenants have claimed \$5.81 in compensation for purchasing ant poison and they submitted a receipt to show this expense was incurred.

The Tenants are seeking compensation, which they refer to as a rent refund, in part, because this rental unit is an illegal suite with one entrance; there are three residential units in one house; and there was no fan in the bathroom. The Landlord stated that none of this was the condition of the rental unit when it was viewed by the male Tenant prior to entering into the tenancy agreement.

The Tenants are seeking compensation, which they refer to as a rent refund, in part, because the Landlord did not make repairs to the bathrooms prior to the start of the tenancy. The male Tenant stated that when he first viewed the rental unit he noticed there were mould and water stains in the both bathroom; that the Landlord promised to repair the bathrooms; and that there were no specific discussions on how the bathrooms would be repaired.

The Landlord stated that there was mildew in the bathrooms when the male Tenant viewed the rental unit but mould was not present. He agreed to paint the bathrooms; he had one bathroom fully painted; and he painted around the shower tiles in the second bathroom.

The female Tenant stated that that one bathroom was fully painted; and the second bathroom was only painted around the tiles.

The Tenants submitted several photographs of the bathrooms.

The Tenants are seeking compensation, which they refer to as a rent refund, in part, because the rental unit had mould in various locations throughout the rental unit. The female Tenant stated that she and her

two daughters became very ill after living in the rental unit; that she sought medical treatment for her symptoms; and that she was told that she was suffering from mould poisoning.

The Landlord stated that there was no mould in the rental unit; that there had been a flood in the rental unit in late June of 2016; that he had made arrangements to have the flood damage repaired; and that some of the photographs submitted in evidence depict the flood damage that had not yet been repaired.

The Tenants submitted no evidence from a recognized expert that establishes there was mould in the rental unit. The Tenants submitted no evidence to support the female Tenant's testimony that she was diagnosed with mould poisoning.

The Landlord submitted a letter from a restoration company, dated August 31, 2016, which declares that there was dry rot in the bedroom; that there was no sign of mould in the bedroom; and that after the flood the bedroom was dried to prevent mould growth.

The Landlord and the Tenant agree that sometime after the rental unit was viewed and the tenancy began there was a flood in the rental unit that rendered the master bedroom temporarily unusable. The parties agree that the Tenants agreed to move into the unit with the understanding that the damaged to the bedroom would be repaired and that the bedroom was not repaired by the time they vacated the rental unit. The Landlord submitted evidence to show that the bedroom had been repaired by August 31, 2016.

The Tenants are seeking compensation for moving costs, including \$323.00 for storage and \$94.85 for a moving truck.

The Witness for the Tenant stated that:

- she spent four days cleaning the rental unit at the start of the tenancy;
- after helping to clean the rental unit she felt unwell;
- the photographs submitted in evidence by the Tenants fairly represent the condition of the unit at the start of the tenancy;
- she saw rodents on the residential property, but not inside the unit;
- there was tape covering various crevices in the unit;
- she saw a colony of ants in the rental unit; and
- water in the shower stall would not drain.

The Landlord stated that on July 11, 2016 he gave the Tenants \$425.00, in cash, which was intended to compensate the Tenants for repairing the toilet and for cleaning the rental unit for this repair. He submitted a copy of a document, dated June 14, 2016, which reads, in part: ``We received our damage deposit back (750) pet deposit \$750 and \$200 for cleaning supplies \$150 and \$75 for 109 hours work``.

The female Tenant stated that she wrote added that notation on the bottom of the tenancy agreement; that the parties could not agree on the amount of compensation that should be paid; because they could not agree on the amount of compensation the Landlord did not pay the Tenants any compensation cleaning; and the Tenants did not sign the notation because they did not receive any compensation.

Analysis:

Section 44(1)(a) of the *Residential Tenancy Act (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*. The evidence shows that neither party gave written notice to end this tenancy in accordance with these sections.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and 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. As there is no evidence that the Tenants gave the Landlord written notice of any deficiencies with the rental unit, I cannot conclude that the Tenants ended this tenancy in accordance with section 45(3) of the *Act*.

As neither party gave written notice to end the 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 there is no evidence that the tenancy agreement required the Tenants to vacate at the end of the fixed term of the tenancy, 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. I find that this tenancy ended when the Tenants vacated the rental unit on July 10, 2016.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find 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*.

There is a general legal principle that places the burden of proving a claim on the party that is seeking compensation. As the Tenants filed this Application for Dispute Resolution, they bear the burden of proving they are entitled to compensation.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property; and made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or in prescribed circumstances, a rental unit or residential property. I find that the need to repair a flooding toilet is an "emergency repair".

Section 33(3) of the *Act* authorizes tenants to make necessary emergency repairs after the tenant has made at least 2 attempts to telephone the landlord or a person identified by the landlord as the person to contact for emergency repairs and, following those attempts, the tenant has given the landlord reasonable time to make the repairs. On the basis of the undisputed testimony that the Tenants telephoned the Landlord on several occasions regarding the problem with the toilet, I find that the Tenants had the right to repair the toilet.

Section 33(5) of the *Act* requires a landlord to reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. I find that the Tenants have served the Landlord with a copy of a receipt for \$40.57. I find that \$18.99 of this receipt is for an item that was likely used to repair the toilet (toilet valve), and that the Landlord must compensate the Tenants for this expense. I find that the remainder of the receipt does not appear to be directly related to repairing the toilet and I cannot, therefore, conclude that the Tenants are entitled to compensation for these items, pursuant to section 33(5) of the *Act*.

I find that there is insufficient evidence that the Landlord was ever provided with a receipt, in the amount of \$44.93, which would correlate to a claim for this emergency repair. In reaching this conclusion I was heavily influenced by the fact that such a receipt was not located in the evidence package. As there is

insufficient evidence that the Tenants provided the Landlord with a receipt for \$44.93 which outlines costs for repairing the toilet, I cannot conclude that the Tenants are entitled to compensation for any additional costs for the emergency repair.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 37(2) of the *Act* requires tenants to leave a rental unit reasonably clean at the end of a tenancy. By extension, I find that a landlord is obligated to provide a tenant with a rental unit that is reasonably clean at the start of a tenancy.

I have authority to determine whether or not a rental unit is provided to a tenant in reasonably clean condition at the start of a tenancy. Residential Tenancy Branch Guideline One suggests that the term "reasonably clean" is not necessarily the standards of the arbitrator, the landlord or the tenant. On the basis of the testimony of the female Tenant and the Witness for the Tenant and, in particular, the photographs of the rental unit, I am satisfied that the rental unit was not left in reasonably clean condition.

I find that the Landlord failed to comply with section 32(1) of the *Act* when he did not provide the Tenants with a rental unit that was left in reasonably clean condition. I therefore find that the Tenants are entitled to compensation for the time and money they spent cleaning the rental unit, in the amount of \$1,166.13. This award includes \$1,090.00 for time spent cleaning the rental unit and cleaning supplies of \$76.13, as calculated from the receipts submitted in evidence.

I find that the Tenants submitted insufficient evidence to establish there were mice in the rental unit during the tenancy. In reaching this conclusion I was heavily influenced by the female Tenant's testimony that a mouse was not seen inside the rental unit during the tenancy and by the Landlord's speculation that the evidence of mice remained after a previous infestation had been rectified.

Regardless of whether there were mice in the unit at any point in this tenancy, it is clear that the Tenants were left with the task of cleaning a large amount of mouse droppings. I find that the Tenants have been compensated for cleaning the rental unit, which included the need to clean mouse droppings, and that further compensation is not warranted.

On the basis of the undisputed evidence I find that there was an ant infestation in the rental unit and that when it was reported to the Landlord he did not address the problem on behalf of the Tenants. I find that the Landlord's failure to address the problem breached the Tenants' right to the quiet enjoyment of the rental unit, as they were left to address the situation. I therefore find that the Tenants are entitled to compensation of \$50.00 for this breach plus the \$5.81 they spent on poison.

In the absence of any evidence to show that the Landlord informed the Tenants that the rental unit complied with zoning bylaws, that the Landlord told the Tenant there was more than one entrance to the rental unit; that the Landlord told the Tenants that there would be a fan in the bathroom, I cannot conclude that the Landlord misrepresented these issues. I therefore find that the Tenants are not entitled to compensation for these issues.

I find that there is insufficient evidence to establish that the Landlord promised to do anything to the bathrooms other than to paint them. In reaching this conclusion I was heavily influenced by the male Tenant's testimony that the Landlord did not specify how he was going to fix the bathrooms and by the Landlord's testimony that he only promised to paint the bathrooms. On the basis of the undisputed evidence I find that the Landlord agreed to paint the bathrooms in the rental unit. I find that an agreement to paint a room implicitly implies that any mould or mildew on the walls will be address prior to painting.

On the basis of the photographs submitted in evidence, I find that the Landlord did not paint the bathrooms in a manner that would satisfy most reasonable people. I find that the Landlord's failure to properly paint the walls breached the Tenants' right to the quiet enjoyment of the rental unit. I therefore

find that the Tenants are entitled to compensation of \$50.00 for this breach.

I find that the Tenants submitted insufficient evidence to establish there was mould in the rental unit. In reaching this conclusion I was influenced by:

- the absence of evidence from a qualified professional that establishes there was mould anywhere in the rental unit;
- the absence of evidence from a qualified professional that establishes any of the staining or discoloration depicted in the photographs submitted as evidence by the Tenants is actually mould; and
- the letter from a restoration company, dated August 31, 2016, which declared that there was no mould in the bedroom and that drying equipment had been used after a flood to prevent mould growth.

I find that the Tenants submitted insufficient evidence to establish that the health of anyone living in the rental unit was impacted by mould. In reaching this conclusion I was heavily influenced by the absence of any medical evidence that supports the submission that the female Tenant had mould poisoning.

As the Tenants have failed to establish there was mould in the rental unit, I am unable to award compensation for this alleged deficiency.

On the basis of the undisputed evidence I find that there was a flood in the rental unit shortly before this tenancy began; that the Tenants could not use the master bedroom as a result of the flood for any point during the tenancy; and that the Landlord had repaired the damage to the bedroom by August 31, 2016.

I find that the Landlord acted reasonable and responsibly by repairing the damaged master bedroom in a timely manner. In spite of the actions taken by the Landlord I find that the Tenants were unable to use the bedroom for the few days they lived in the unit. I find that the Tenants are entitled to compensation for being unable to use this room for those few days, in the amount of \$50.00.

In adjudicating this matter I took the general condition of the rental unit into consideration. On the basis of the photographs submitted in evidence I find that the rental condition was not in good condition. I find that the general condition of the rental unit would not likely have changed significantly between the time it was viewed by the male Tenant and the time the tenancy started, and that the rent being charged likely reflected the condition of the rental unit. While I find that the Tenants are entitled to compensation for cleaning and infestations, they are not entitled to compensation for the general condition of the unit.

In determining that the Tenants are not entitled to a greater amount of compensation for a breach of their right to quiet enjoyment I was influenced, in part, by the fact the Tenants did not occupy the rental unit for very long and that the inconvenience of living with the deficiencies was, therefore, short-lived. I further find that the Tenants had the right to file an Application for Dispute Resolution requiring the Landlord to make various repairs and that they could have remained in the rental unit while those repairs were being made, in which case they would likely have been granted greater compensation for a breach of their right to quiet enjoyment.

I find that at the time the Tenants vacated the rental unit, they did not have the legal right to end their fixed term tenancy. While I accept that there were problems with the rental unit that the Landlord was obligated to fix, the Tenants should have filed an Application for Dispute Resolution to correct those deficiencies, rather than vacating the rental unit. I therefore dismiss the application for moving costs, as those are costs the Tenants incurred because they opted to end the tenancy.

In adjudicating this matter I have placed no weight on the Landlord's testimony that he gave the Tenants \$425.00, in cash, for repairing the toilet and for cleaning the rental unit for this repair. I find that the Landlord submitted insufficient evidence to corroborate his testimony that the payment was made or to refute the female Tenant's testimony that it was not paid. I found the document dated June 14, 2016 has no evidentiary value, as the Tenants have not signed the notation regarding the payment.

As the Landlord has not established that he paid \$425.00 to the Tenants, I have not taken that alleged payment into account in this adjudication.

I find that the Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$1,440.93, which includes \$18.99 for an emergency repair; \$1,166.13 for cleaning; \$55.81 for the ant infestation; \$50.00 for not properly painting the walls; \$50.00 for being unable to use the master bedroom; and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution. I therefore grant the Tenants a monetary Order for \$1,440.93. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: January 20, 2017

Residential Tenancy Branch