



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

: ERP, LRE, MNDC, MNSD, O, OLC, PSF, RP, RR

CNC

Introduction

This was originally scheduled to be a conference call hearing with respect to the tenants' application for a monetary award and other relief, including orders directing the landlord to comply with the Act, Regulation or tenancy agreement, to provide services or facilities, to make repairs and to refund deposits. The matter was scheduled to be heard by conference call on December 22, 2017. As noted in my interim decision dated December 22, 2017, the application was adjourned to be heard together with the tenants' application to cancel a one month Notice to End Tenancy which was set for hearing by conference call on January 17, 2017.

Issue(s) to be Decided

Should the landlord be ordered to make repairs, including emergency repairs?

Are the tenants entitled to a monetary award and if so, in what amount?

Should the landlords be ordered to comply with the Act Regulation or tenancy agreement?

Are the tenants entitled to a rent reduction?

Are the tenants entitled to an order that the landlord provide services or facilities?

Should the Notice to End Tenancy dated December 6, 2016 be cancelled?

Background and Evidence

The rental unit is a house on rural land in Vernon. The tenancy began March 15, 2016. Monthly rent is \$1,800.00, payable on the 15th of each month. The tenants paid a security deposit of \$1,800.00 at the commencement of the tenancy.

There was an earlier dispute resolution proceeding with respect to this tenancy. In a decision dated September 29, 2016 after a conference call hearing on the same day, an arbitrator addressed a number of claims advanced by the tenants including an application to cancel a Notice to End Tenancy. The landlords did not attend the conference call hearing. The arbitrator decided that the tenancy agreement should be construed to include the rental of the house and land, including the fields and outbuildings and that irrigation was to be supplied. She ordered that, effective immediately, the tenants would be free to use all of the property and outbuildings. The arbitrator also found that the tenants and their guests were entitled to park vehicles on the property in accordance with the provisions of the tenancy agreement.

The arbitrator also gave the following directions:

In relation to the concerns regarding mold and the presence of the landlords' personal property in the basement, I find that no later than October 15, 2016 the landlord must:

- remove every piece of personal property from the basement;
- fully and completely clean the basement and ensure that any signs of mold are removed; and
- once the personal property is removed and the basement is fully cleaned ensure the humidifier is fully operational.

The landlord must complete the work in the basement in a timely fashion, with proper notice of entry. This work must be completed over no more than two days; thus eliminating the need for multiple entries to the property.

The arbitrator stated the following conclusions in her decision:

The tenants have full use of the property, outbuildings and pool.

The tenants may park vehicles on the residential property that comply with clause 23 of the tenancy agreement. Guests may park their vehicles on the property.

The landlord is ordered to remove all personal property from the basement, to clean the basement of any mold and to ensure the dehumidifier is operational no later than October 15, 2016.

The landlords' right to enter the residential property, including the 5.5 acres is now restricted.

The landlord must issue a proper notice of entry, as set out in section 29 of the Act, for those restricted types of access that have been set out in this decision.

The one month Notice to end tenancy for cause issued on August 8, 2016 is cancelled.

The landlords' application for review consideration of the September 29th decision was dismissed and the September 29, 2016 decision was confirmed by Review Consideration Decision dated October 13, 2016.

The landlord served the tenants with a one month Notice to End Tenancy for cause dated December 6, 2016. The reason for the Notice was that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk. The landlord testified that the tenants prevented the landlord from entering the property with a mould inspector and a professional photographer on November 18th although he provided the tenants with the appropriate written notice. The landlord again hired a mould inspector and a plumber to attend the property on December 6th to deal with the tenants' complaints concerning leaks and repairs. When the landlord arrived with the workers, the tenants denied them access. The police advised the landlord not to attempt to enter if the tenant physically resisted them. The landlord, the inspector and the plumber left without entering. The landlord testified that the mould inspector advised the landlord that, due to the tenant's conduct, he was no longer willing to provide his services at the rental property. After the incident the landlord served the tenants with a one month Notice to End Tenancy for cause. The landlord's position is that the tenants' actions put the landlords' property at significant risk.

At the hearing before me the tenants testified that the landlord did not fulfill the requirements set out by the arbitrator in the September 29th decision. The tenants referred to repairs that were needed; they said there was a problem with the bathroom ceiling caused by a leak from the upstairs bathroom directly above and a leaky skylight; there was a problem with the upstairs bathroom toilet as well.

The tenants testified that the basement was still full of the landlord's belongings and unusable by the tenants and the landlord had not obeyed the direction of the previous arbitrator. The tenants acknowledged that the landlord did investigate and address the leak problems

The tenants testified that they were prevented from using the property and not provided with access to irrigation. They said they were denied use of the pool and denied access to the outbuildings on the property.

The tenants claimed that the landlord delayed making repairs that were agreed to be performed at the start of the tenancy; this work included the installation of flooring and a railing in the loft area.

The tenants said they have been harassed by the landlords' repeated visits to the rental property. They said that the landlord showed up at the rental unit on December 6th with two men to perform work on the property. The tenant did not consider that the landlord needed to be present. The tenant requested that the workers produce business cards. According to the tenant the individual would not identify themselves. The tenants verified the identity of the mould inspector and when the tenant went outside to let them in, the inspector refused to enter. The tenant complained that the other individual present refused to identify himself. The landlord and the two men with him then left the property.

The tenants said that recently in December there was a water leak in the well due to frozen pipes. The tenants notified the landlord of the problem. The tenant complained that the landlord did not properly repair the problem and accused the landlord of spilling antifreeze in the basement and leaving an open container of antifreeze on the bench in the basement. The tenant alleged that this was done maliciously.

The tenants claimed compensation as set out on their monetary order worksheet as follows:

• 1/3 of house unable to use for 7+ months:	\$4,200.00
• Loss of use of property and pool for 6 months:	\$3,600.00
• Pain, suffering, time and expenses:	\$1,000.00
• Storage of landlord's vehicle on property:	\$490.00
• Storage of landlord's 5 th wheel trailer on property:	\$210.00
• Loss of quiet enjoyment for 6 months:	\$1,600.00
• Renovations/repairs to living room & loft not completed for 3 months	\$600.00
Total claimed:	\$11,700.00

The landlords responded to the tenants' testimony. The landlord disagreed with the September 29th arbitrator's decision. They said that the tenants were never intended to have the use of the entire property. The basement, for example has never been included as part of the rental property in prior tenancies. The basement has low ceilings and concrete floors. It contains some items that belong with the house that are not the landlords' personal belongings and the landlords have also used it for storage of some of the landlords' personal belongings. The landlord testified that since the September 29th decision they have removed all of their personal belongings as ordered and the

only items that remain in the basement are some items that originally came with the house and are not the landlord's personal property.

The landlord said that the tenants were informed that the landlord's daughter would visit the property to perform her rowing practice on the lake twice per week in the summer. The landlord moved a trailer onto the property with the tenants' knowledge and consent for his daughter to sleep in twice a week before her rowing practice. The landlords did not use the trailer and their daughter did not attend for rowing practice due to the tenants' later disagreement with her presence at the property.

The landlords said that early in the tenancy the landlord and the tenants got along well. The landlord had to perform some work on the land, including weed control ordered by the Regional District and the tenants had no objections to the landlord's presence. The landlord said that the tenant's attitude changed; he recounted a number of occasions when the tenant became hostile when the landlord attended after giving proper written notice. In August the tenants blocked access to the rental property by placing vehicles parked horizontally in each of the driveways and this amounted to a hazard because it prevented emergency vehicles from entering the property.

The landlord referred to the tenant's claims of mould problems. The landlord said that the basement does not have a mould problem. He said that what the tenant identified as mould is more likely salt deposits leached from the concrete. The landlord said that there is a dehumidifier in the basement, necessary to keep the basement dry. The landlord discovered that the tenants had unplugged it and the landlord told them that it must be kept running and emptied regularly to reduce moisture in the basement.

The landlords testified that they have removed all of their personal belongings from the basement pursuant to the arbitrator's order. The landlord denied that the tenants have been deprived of the use of the pool. The pool use is seasonal and the landlord hired a pool maintenance company to drain and winterize the pool. The landlord said that the tenants were told not to use the pool at the outset of the tenancy because the deck needed to be replaced and the landlord was not financially able to provide a new deck, but despite the landlord's demand the tenants used the pool throughout their tenancy until it was drained and winterized at the end of the season.

The landlords said that the tenants knew when they rented the unit that there was work to be done and the landlord would be installing flooring and the railing after the tenancy began. The tenants wanted to move in without delay and they agreed to accept the landlord's schedule for performing the work. The landlord installed the flooring in the living room and handrails in the loft shortly after the materials were delivered.

Analysis

The tenants applied to dispute the one month Notice to End Tenancy. The Notice was given on December 6, 2016 and it required the tenants to move out by January 7, 2017, although, if the Notice were upheld, the earliest day that it could have been effective was January 31, 2017. The basis for the Notice was the tenants' refusal to allow the landlord and persons hired to perform work to have access to the rental property after written notice was given. By December, 2016 the relationship between the landlords and the tenants had irretrievably broken down. The tenants claimed that the landlord needn't have been present and they had to verify the identity of the persons attending, but after they had done so one of the individuals was no longer willing to enter the unit and this was not the tenant's fault. For some time the tenants had objected to any attendance by the landlord at the rental property. The male tenant, in particular was openly hostile towards the landlords. I find that the tenants were not justified in their efforts to restrict entry by the landlord, his mould inspector and plumber on December 6th, but given the history of strained relations between the parties and the previous decision of an arbitrator restricting the landlords' right of entry, I find that this incident does not constitute sufficient cause to end the tenancy; I therefore order that the Notice to End Tenancy dated December 6, 2016 be, and is hereby cancelled. In making this order I am mindful of the fact that the tenancy is for a fixed term ending March 15, 2017 and the landlords have presented another notice to end the tenancy for landlord's use, to end the tenancy effective March 15, 2017.

With respect to the tenants' monetary claims, I do not find that the tenants are entitled to a monetary award in any amount for loss of use of the rental unit or of the rental property. The tenants claimed for loss of use of the basement, due to a claimed mould problem and the presence of the landlords goods stored in the basement. The tenants thwarted the landlord's efforts to have a professional inspect the basement; I accept the landlord's testimony that the dehumidifier is working properly and the tenants have failed to empty it regularly as required. I find that it has not been shown that there is any mould problem in the basement. The landlords have removed their personal belongings, leaving only items that came with and belong to the house itself. I accept the landlord's evidence that the basement does not constitute useful living space; that it has not been used by other tenants and it is of limited use for storage. The tenants have apparently not used the basement for storing any of their goods even though space is available and I find that they have not demonstrated that they have suffered any compensable loss as a result of being deprived of the use of the basement for storage.

The tenants claimed that they have been prevented from using the land and they have been deprived of irrigation water. The landlord testified that this is not the case; the landlords said that they did not intend to rent the entire property to the tenants; they

disagree with the September 29th decision, but they have not restricted the tenants' access to the property and have not prevented them from using water for irrigation. The tenants did not submit any evidence of an intended use for the agricultural property and they have not provided evidence to show, on a balance of probabilities, that they were prevented from irrigating or that they suffered any compensable loss or prevention of access to the property. The landlord gave the tenants a directive not to use the swimming pool, but on the evidence presented at the hearing, the tenants had the use of the swimming pool and did use it until it was closed and winterized at the end of the swimming season; this portion of the tenants' monetary claim is dismissed without leave to reapply.

The tenants objected to the presence of the landlords' vehicles and trailer on the property. They claimed storage costs for these items. I do not find that there is any basis for a claim for storage costs. The tenants did not incur any costs because of the presence of the vehicles, but this is a matter that will be considered under a different head of the tenants' claims.

The tenants claimed compensation for loss of quiet enjoyment of the rental property. The evidence from the parties established that the landlords have, from the beginning of the tenancy continued to assert their proprietary rights to the rental property despite the fact that the tenants were to have exclusive possession of the property. At various times the landlords directed the tenants to stop using the pool and advised that they were not permitted to use the land. The landlords were frequently at the rental property and sought to continue having use and access to the land, despite the tenancy; they intended to have their daughter stay at the property, although this had not been agreed to by the tenants. The tenants did suffer a loss of use, enjoyment and privacy as a consequence of the landlords' frequent intrusions; I include as an aspect of the loss of use and enjoyment, the presence of the landlords' trailer and vehicle on the property and as well I include as an element of loss of use and enjoyment, the delay in the installation of flooring and a railing in the rental unit. The delay interfered with the tenants' use and enjoyment of the rental property for a period after the commencement of the tenancy, but it is also a fact that the tenants knew and agreed that this was work that needed to be done when they agreed to rent the unit, so they must be taken to have accepted some period of inconvenience and loss of use when they signed the tenancy agreement. Considering all of these factors I find that an appropriate award of compensation for loss of use throughout the tenancy to be an award in the amount of \$1,800.00.

I find that there is no basis for any additional orders for repairs, to direct the landlord to provide services or facilities or to comply with the Act, Regulation or tenancy agreement. I accept the landlord's evidence that they have addressed all of the ordered repairs to the extent possible, given the difficulty presented in getting the tenants'

permission to access the rental unit. I note that this dysfunctional tenancy will be ending shortly.

The tenants have been partially successful in their monetary claim and the Notice to End Tenancy has been cancelled. The tenants are entitled to recover the filing fees for their two applications in the amount of \$100.00 for each application, for a total award of \$2,000.00 This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The Notice to End Tenancy has been cancelled. The tenants have been granted a monetary award in the amount stated; all other claims are dismissed without leave to reapply.

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: February 24, 2017

Residential Tenancy Branch

