



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, MNSD, MNDC, RP, RR, OPR, MNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and damage to the unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-

examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Is the tenant entitled to have the 10 Day Notice to End Tenancy set aside?

Is the tenant entitled to an order requiring the landlord to make emergency repairs?

Is the tenant entitled to an order to requiring the landlord to make repairs to the unit?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about August 15, 2016. Rent in the amount of \$2500.00 is payable in advance on the fifteenth day of each month. The tenant failed to pay rent due on December 15th, 2016 and on January 5, 2017 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent due on January 15th, 2017. The landlord testified that the tenant also owes money for the gas, hydro and water as per their tenancy agreement.

The landlord testified that she thinks the tenant broke the front gate and railing and wants the tenant to pay for it. The landlord testified that shortly after the tenant moved in they asked for a new fridge because the old one smelled; the landlord thinks that the tenant should pay for that. The landlord testified that the tenant installed a new washer and dryer and it caused a short circuit in the electrical box causing a \$520.00 repair that the landlord wants the tenant to pay for. The landlord testified that due to a faulty septic pump the lower floor of the home had some black water enter the suite. The landlord testified that she called the restoration company immediately and that the matter is being handled by her insurance and a professional renovation company.

The landlord testified that she advised the tenants to remove their personal belongings to allow the men to work. The landlord testified that the tenants originally agreed but when the men came to work they were denied access to the area and that the tenants had not removed their items. The landlord testified that the tenants advised her that they would move out by January 15, 2017 and that she could start repairs after they move

out, to which the landlord agreed. The landlord testified that she did not see any of the damaged items as claimed and that the impact on the tenants was minimal as they still have all their belongings in the basement.

The landlord is applying for the following:

Item	Amount
Railing and Gate	1470.00
Water bill	35.60
Hydro	454.53
Gas bill	486.73
Fridge	447.16
Electrical panel repair	520.00
December unpaid rent	2500.00
January unpaid rent	2500.00
Filing fee for this application	100.00
Less security deposit	-1250.00
Total Monetary Order	\$7264.02

The tenant gave the following testimony. The tenant testified that they did not pay the rent because of the failed septic pump that caused black water to enter basement of the home. The tenant testified that if the landlord replaces all the items that were damaged they will gladly pay the rent. The tenant testified that he agrees that he is responsible for the utilities costs and that he has already made arrangements to have those bills transferred into his name. The tenant testified that the landlord has allowed this repair to go on far too long and that they wish to remain tenants in this home. The tenant testified that it has affected the health of their daughter and their dog. The tenant testified that he did not damage the front gate. The tenant testified that the previous fridge smelled of mold and needed to be replaced. The tenant testified that he bought a brand new washer and dryer and that the electrician advised him that it was simply a bad breaker and that problem was a pre-existing one.

The tenant is applying for the following:

Item	Amount
Louis Vuitton Purse	5600.00
Chanel Purse	2700.00
Sequence rhinestones evening gowns	3000.00
2 pairs of Ugg boots	600.00
Suede boots	350.00
8x6 rug	200.00
Long white cashmere coat	500.00
Gucci purse	1300.00
Vet visit & meds	160.00
Podiatrist	75.00
Medication for foot	68.00
Plumber	180.00
Furnace repair	190.00
Pain and suffering	3000.00
Total Monetary Order	\$17923.00

Analysis

Landlords Claim

Rent

The tenant failed to pay their rent in full within five days of having received the 10 Day Notice. The tenant testified that he did not pay the rent because the landlord was taking too long to conduct repairs. Section 26 of the Act addresses the issue before me as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Although the tenant made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice he has not provided sufficient evidence to have the notice set aside.

I find that the landlord is entitled to an Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). The landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence provided by the landlord, I am satisfied that the tenants continue to owe the landlord unpaid rent. I find that the landlord is entitled to \$5000.00 in unpaid rent.

Gas, Water, Hydro

The tenant does not dispute that he is responsible for these costs as per the tenancy agreement. The tenant advised that he is addressing these issues; however the landlord advised that the tenant did not provide any of this information to her and that these debts remaining outstanding with each of the respective companies. Based on the documentary evidence submitted by the landlord, I am satisfied that they are entitled to the amounts as claimed for these costs of \$976.86.

Gate and Railing

In the landlords own testimony she testified that she doesn't know who damaged the gate but "thinks" it's the tenant. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Fridge

Section 32 of the *Act* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant. The landlord did not provide sufficient evidence to show that this was a frivolous request by the tenant to have the moldy fridge replaced. Based on insufficient evidence before me and on a balance of probabilities, I dismiss this portion of the landlords claim.

Electrical Panel

The tenants testified that this was a pre-existing issue. The landlord believed it to be as a result of the tenants plugging in their new washer and dryer. The landlord has not provided sufficient evidence to show that this occurred as a result of the tenants' actions and I therefore dismiss this portion of their claim.

Tenants Claim

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and to satisfy the following four grounds.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant provided a receipt for the plumber and furnace technician however the landlord testified that the tenant did not advise her of those issues and that he did those repairs on his own volition. Based on the evidence before me, I find that the tenant did not provide the opportunity for the landlord to address those repairs and it is unclear to me whether this was just regular required maintenance or damage caused by the tenants own actions. Based on the insufficient evidence before me I dismiss this portion of the tenants claim.

The tenant provided an extensive list of items that he alleges were damaged from the faulty septic pump. The tenant provided only a copy of one receipt for the Louis Vuitton purse. The landlord testified that the tenant did not show her the alleged damaged items or even photos of them and questions why the tenants do not have "renters insurance". Other than the one receipt, the tenant has not provided any supporting evidence such as photos, sworn statements or receipts to support his claim. The tenant has not provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the *Act*. The tenant has failed to provide sufficient evidence that the landlord was negligent or reckless in causing the septic pump to fail. Based on the insufficient evidence before me, I must dismiss this application in its entirety.

Conclusion

The landlord has been successful for the following items:

Item	Amount
Unpaid December 2016 Rent	2500.00
Unpaid January Rent	2500.00
Hydro	454.53
Gas	486.73
Water	35.60
Filing Fee	100.00
Less deposit	-1250.00
Total Monetary Order	\$4826.86

The landlord is granted an order of possession and a monetary order for \$4826.86. The landlord may retain the security deposit.

The tenants' application is dismissed in its entirety.

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 06, 2017

Residential Tenancy Branch