



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, OLC, PSF, RP, RR, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing an additional rent increase, and seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order that the landlords comply with the *Act*, regulation or tenancy agreement; an order that the landlords provide services or facilities required by the tenancy agreement or law; for an order that the landlords make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on the first scheduled date and was adjourned for continuation. My Interim Decision was provided to the parties. Both tenants attended the hearing on both scheduled dates. One of the landlords attended the hearing on the first scheduled date and the other landlord attended on the second scheduled date, and the landlords were represented by legal counsel.

Both tenants and one of the landlords gave affirmed testimony and the parties, or counsel were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that the landlords have increased the rent contrary to the *Residential Tenancy Act* and the regulations and the tenancy agreement?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically compensation for loss of facilities and loss of quiet enjoyment of the rental unit?

- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically the terms of the tenancy agreement, maintaining the rental unit, and with respect to the landlords' right to enter the rental unit?
- Should the landlords be ordered to provide services or facilities required by the tenancy agreement or law?
- Should the landlords be ordered to make repairs to the unit, site or property?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The first tenant** (CD) testified that this month-to-month tenancy began on September 1, 2016 and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 per month, all inclusive, is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. No security deposit or pet damage deposit was collected by the landlord. The rental unit is a 4,000.00 square foot single family dwelling occupied by the 2 tenants only. No written tenancy agreement exists.

The tenant further testified that prior to the commencement of this tenancy, the tenants were sub-tenants of another tenant who had a written tenancy agreement with the landlords. They were not room-mates, but had their own tenancy agreement with the original tenant. A copy of the advertisement the tenants answered as sub-tenants has been provided showing rent in the amount of \$900.00 per month for a portion of the rental home, including all utilities. The landlord evicted the original tenant, which ended that tenancy agreement, and the parties negotiated this tenancy on August 31, 2016.

The landlords have filed an application for dispute resolution against the original tenant, and the tenant assisted preparing a Monetary Order Worksheet and the application for the landlords' claim for damages and to keep the original tenant's security deposit. The landlords had asked for the tenant to provide an itemized list of time spent cleaning, and the landlords have claimed that amount as against the original tenant. That hearing is scheduled for the end of this month. A copy of the invoice has been provided in the amount of \$562.50, which the tenants claim as against the landlords.

On November 17, 2016 during a phone conversation, the landlord said the hydro bill was higher than expected. The landlord advised that all rent money went to the landlord's mother who was upset that the tenants were offered a tenancy all-inclusive of utilities. The tenants declined to meet because the landlord's mother doesn't speak English and the tenants don't speak the landlord's native language. The tenants

promised to do what they could to reduce hydro consumption. The tenants have never been provided with a utility bill, and have paid \$1,600.00 per month since the beginning of the tenancy. The landlord now demands payment of hydro bills, which the tenants claim is an unfair rent increase.

On January 7, 2017 after the tenants served the landlords with the hearing package for this hearing, the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants also received a letter from the landlords dated January 16, 2017 stating that the rental unit appeared to be abandoned and that if the tenants didn't respond to the letter, the landlords would have to assume that the tenants have vacated and items left behind would be stored for 60 days. The landlord's husband had texted the tenant 2 days earlier saying that he had just seen the tenants at the rental unit.

On November 28, 2016 the tenants had advised the landlords that the fireplace in the dining room wasn't working. On November 30, 2016 the parties spoke again on the phone and the landlord advised that it wouldn't be repaired because the plan was to tear down the house. The tenants provided the landlords with a list of repairs required, a copy of which has been provided, and asked that the repairs be completed by December 15, 2016.

The landlord's husband had also promised to find a remote control for the garage door or get a new one but hasn't done so. The landlord's utility trailer is parked against the back door of the garage blocking access to the back, so is inconvenient.

The tenants had also requested the carpet attachment for the central vacuum system which is missing, and the landlords have still not replaced it.

On December 19, 2016 the tenants arrived home and discovered that the landlords had allowed propane to run dry so there was no hot water. The landlords didn't have the tank filled for 3 months.

The tenants claim \$400.00 compensation for each of the months of September, 2016 to January, 2017 for harassment by the landlords, constant texting and phone calls, showing up unannounced to harass the tenants about the hydro bills, loss of services or facilities (fireplaces and the indoor hot tub) and refusal to make repairs. The hot tub is material to the tenants because there are no bath tubs in the rental unit, and the tenant has arthritis. The landlords agreed to repair it when the original tenant moved out.

The tenants also seek an order that the landlords hire professionals to repair or provide a remote control for the garage door, repair stairs that are dangerous and falling apart,

provide a carpet attachment for the central vacuum system that is missing, and repair the fireplaces in the dining room and living room. The tenants also seek an order that rent be reduced by \$400.00 per month, or \$50.00 per item, until the repairs are completed.

**The landlord** (AN) testified that the tenants did not pay a security deposit, and there were no written or oral agreements between the landlords and tenants with respect to amenities included in the rent, other than water, a stove, oven, dishwasher, fridge, carpet, window coverings, laundry, storage and garbage. The tenants were to pay for 60% of the hydro and propane while occupying the main house. Those were the terms of the tenancy agreement with the original tenant, whom these tenants moved in with, and lived with for about 2 or 3 months before the original tenant vacated. A copy of a tenancy agreement with the original tenant has been provided showing a fixed term from May 1, 2016 to May 1, 2017 for rent in the amount of \$1,500.00 per month, and confirming the testimony of hydro and propane.

Emails and text messages have been sent to the tenants requesting payment of utilities, but the tenants have not paid any. A copy of a request has been provided dated December 9, 2016, and the landlords received no response from the tenants. The landlord testified that his wife had sent the email to the tenants and is not certain if the actual bill was attached. Copies of hydro bills have been provided for this hearing. The first hydro bill is dated November 7, 2016 and covers the period of September 3 to November 3, 2016 in the amount of \$400.20. The second is dated January 9, 2017 covering the period of November 4, 2016 to January 5, 2017 in the amount of \$729.38

The landlord's wife had tried to meet with the tenants and the landlord's mother to resolve this dispute in person, but the tenants basically kicked her out of the house and sent an email telling the landlords when to come by. Each time the landlords tried to contact the tenants they were accused of harassment. Screen shots of text messages have been provided.

Also, interactions about entering the rental unit to make repairs was easy at the beginning, but recently the landlords have been met with resistance by the tenants except for the landlord checking rat traps twice per week.

**The tenants submit** that they had a tenancy agreement with the original tenant to sub-let for \$900.00 per month, not a roommate scenario where the tenancy agreement transfers. The landlords have accepted \$1,600.00 per month since the beginning of this tenancy and have not given the tenants any utility bills.

**The landlords' legal counsel submits** that when the previous tenant moved out, the applicants in this matter assumed all of the rights and obligations under that tenancy agreement, referring to Section 34 of the *Residential Tenancy Act* and as per a published document entitled "A Guide for Landlords and Tenants in British Columbia."

### Analysis

Firstly, the parties agree that the tenants were sub-tenants of a previous tenant and had a tenancy agreement with that original tenant. The tenants claim that an oral agreement was made after the original tenant's departure for the tenants to rent the rental unit for \$1,600.00 per month including utilities, and that the tenancy agreement the original tenant had with the landlords is not applicable to this tenancy. Certainly the tenancy agreement the tenants had to sub-let is not applicable to this tenancy, and therefore all-inclusive of utilities is not necessarily applicable. The landlord denies that utilities were included and testified that the tenants were to pay 60% of the hydro and full propane usage, as per the tenancy agreement with the original tenant.

The landlords' legal counsel submits that when the original tenant moved out, the applicants assumed all rights and obligations under that tenancy agreement. I disagree, and refer to Residential Tenancy Branch Policy Guideline #19 – Assignment and Sublet which states, in part: "If a landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenants as well." In this case, the tenants have remained tenants in the rental unit, and therefore, I find that a new tenancy agreement was entered into between the landlords and the tenants.

Determining the intent of the parties, considering the conflicting testimony, is material to whether or not the tenants have established an illegal rent increase or loss of facilities which may entitle the tenants to monetary compensation.

Where a party makes a monetary claim as against another party, the onus is on the claiming party to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

The tenant testified that the hot tub was a material term of the tenancy agreement, but I cannot find that the tenants have established that. If it was not contained in a written agreement, and is disputed by the landlords, I cannot find that it was a material term.

Further, I cannot fathom that a landlord would enter into a new tenancy agreement for rent of \$100.00 per month more including utilities than the landlords had with the original tenant who was responsible for a portion of the utilities, particularly when the first hydro bill is \$400.00. I have reviewed utility bills, the text messages and other material provided by the parties. The onus is on the tenants to establish the claim and I am not satisfied that the tenants have established that utilities or an indoor hot tub were included in the rent, or that the landlords have imposed an additional or illegal rent increase.

I do accept that the landlords were responsible, and accepted responsibility in text messages, to repair the fireplaces in October, 2016. With respect to the tenants' claim for damages caused by the landlords' failure to make repairs in a timely fashion, and loss of use of the fireplaces, I find that the tenants have established a claim of \$50.00 per month for October, November, December, 2016 and January, 2017, for a total of \$200.00.

With respect to the tenants' application for compensation for loss of quiet enjoyment of the rental unit, I find nothing in the text messages or evidentiary material to satisfy me that the landlords unreasonably harassed the tenants. The landlords have responsibilities as landlords and the tenants have responsibilities as tenants, and other than requesting payment for utilities, there is no evidence of unreasonably disturbing the tenants, and the tenants' application for compensation for loss of quiet enjoyment is dismissed.

I accept the tenant's undisputed testimony that the landlords are claiming the cleaning costs in the dispute hearing scheduled for the original tenant, and the tenants have established the cleaning costs of \$562.50.

The tenants have provided the landlords with a list of repairs, and if not already done so, I order the landlords to make repairs to the following:

- water leak in master bedroom ensuite shower;
- dining room fireplace;
- living room fireplace;
- front doorway entrance;
- fridge.

I also order the landlords to provide the remote control for the garage, make required repairs to the stairway and provide the carpet attachment for the vacuum.

I further order the landlords to comply with the *Residential Tenancy Act* with respect to maintaining the rental unit. If the repairs above are not made by February 28, 2017, the tenants will be at liberty to make a further application enforcing the repair orders above.

The parties agree that the landlord has been attending the rental unit to deal with mouse or rat traps twice per week, and the tenant testified that notice ought to be given. The *Residential Tenancy Act* states that a landlord may not enter a rental unit without giving at least 24 hours and not more than 30 days written notice that contains the date, time and reason for entry unless the tenant consents at the time of entry. I find that the parties had agreed to the landlords entering for the purpose of dealing with traps, and if the tenants have changed their position in that regard, that is acceptable. I order the landlords to comply by giving the required written notice for any entry other than an emergency unless the tenants agree at the time of entry.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

In summary, I grant a monetary order in favour of the tenants as against the landlords in the amount of \$562.50 for cleaning costs, \$200.00 for loss of use of the fireplaces and \$100.00 for recovery of the filing fee, for a total of \$862.50 and I order that the tenants be permitted to reduce future rent payable until that sum is realized or may otherwise recover it.

### Conclusion

For the reasons set out above, the tenants' application disputing an additional rent increase is hereby dismissed.

I hereby order the landlords to make the repairs listed above by February 28, 2017.

I further order the landlords to comply with the *Residential Tenancy Act* with respect to maintaining the rental unit.

I order the landlords to comply with the *Residential Tenancy Act* by giving the required written notice for any entry to the rental unit for any purpose other than an emergency unless the tenants agree at the time of entry.

I further grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$862.50 and I order that the tenants be permitted to reduce future rent until that sum is realized, or may otherwise recover it.

This order is final and binding and may be enforced.

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 08, 2017

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Residential Tenancy Branch