



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC; OLC

### **Introduction**

This is the Tenants' Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and an Order that the Landlords comply with the Act, regulation or tenancy agreement.

Both parties attended the Hearing and gave affirmed testimony.

It was determined that the Landlords received the Tenants' Notice of Hearing documents, by registered mail, sent May 24, 2017. It was also determined that the Landlords received the Tenants' documentary and electronic evidence, by registered mail.

It was determined that the Tenants received the Landlords' documents, by registered mail.

It is important to note that additional documentary evidence was provided, and which was received by me on June 12, 2017, after the Hearing had concluded. I had made no Order that additional evidence could be provided and therefore this late evidence was not considered.

### **Issue(s) to be Decided**

- Are the Tenants entitled to compensation for loss of quiet enjoyment of the rental unit, the cost of improvements made to the rental property, and the Tenants' moving costs?
- Should the Landlords be ordered to comply with the Act, regulation or tenancy agreement?

## **Background and Evidence**

The rental property is a two bedroom, one bathroom house. A copy of the tenancy agreement was provided. This tenancy began on December 1, 2015. It was a fixed term lease, ending November 30, 2016. The tenancy agreement indicates that “at the end of this fixed length of time, the tenancy may continue on a month-to-month basis or another fixed length of time”. Monthly rent was \$1,400.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00.

On August 29, 2016, the Landlords gave the Tenants a letter, stating:

“Please be advised that we will not be renewing the fixed term lease which expires November 30, 2016, for [rental property]. Therefore, this lease will not switch to a month to month basis on December 1, 2016.”

On September 10, 2016, the Landlords issued, and served the Tenants with, a Two Month Notice to End Tenancy, for the following reason:

“All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.”

The Tenants did not dispute the Notice dated September 10, 2016, and have not made an application against these Landlords for compensation under Section 51 of the Act,

On October 1, 2016, the sale of the rental property was completed and the security deposit was transferred to the new owner.

### **The Tenants gave the following testimony:**

The Tenants stated that they moved out of the rental unit on November 1, 2016. The Tenants testified that they were not provided compensation by the new owner, pursuant to the provisions of Section 51 of the Act, but the security deposit was returned to the Tenants.

The Tenants stated that both of the Tenants have serious medical conditions, which caused them to make inquiries prior to signing the tenancy agreement with the Landlords in November, 2015. In particular, the Tenants wished to be certain that there

was no prior history of leaks in the rental unit. The Tenants stated that the Landlords assured them that there was no history of leaks or mould in the rental unit.

The Tenants stated that they told the Landlords that the Tenants could not use harsh chemicals, such as oven cleaners, and confirmed with the Landlords that the oven was a self-cleaning oven. They testified that after the tenancy commenced, they discovered that the self-cleaning function did not work. The Tenants testified that the Landlords had promised to remodel the kitchen, but that it never happened.

The Tenants stated that on January 28, 2016, they discovered a leak in the ceiling, which they submit was coming from a pre-existing crack by the fireplace chimney, which is in the kitchen/living area of the rental unit. The Tenants stated that the wood that was exposed when the leak was repaired was black and contained mould. The Tenants provided photographs in evidence.

The Tenants stated that initially, the Landlords put a tarp down to stop the leak. On February 26, 2016, repairs to the leak began and the repairs were completed on April 5, 2016. The Tenants stated that from January 28, 2016, until the repairs were complete, they had very limited use of the kitchen, dining room and living area. They testified that it was winter and that they had to bathe their pets outside on the deck; and that they had to watch TV on the deck, using blue tooth technology. The Tenants seek compensation based on daily pro-rated rent of \$43.74 for 96 days, in the amount of \$4,199.04. When I asked about the approximate amount of space that was impacted, the Tenants stated that it was approximately 2/3rds of the square footage of the rental unit.

The Tenants testified that prior to signing the tenancy agreement, they told the Landlords that they would only accept a long term rental and that the Landlords agreed. The Tenants stated that the Landlords sold the rental unit less than a year afterwards, and therefore misrepresented themselves. They stated that they would not have signed the tenancy agreement if they had known it would be a short term tenancy. The Tenants seek compensation for their moving costs, in the amount of \$534.00. A copy of the receipt for moving costs was provided in evidence.

The Tenants testified that they made improvements to the rental unit, which they paid for and were not reimbursed for, and that those improvements unjustly enriched the Landlords. The Tenants stated that they planted fruit trees and repaired a fence on the rental property, even though it was the Landlords' obligation to repair and maintain the

fence. The Tenants seek compensation in the amount of \$843.00 for supplies and \$919.00 for labour.

The Tenants stated that the Landlords attempted to “bait us with” an offer of a “gift of \$1,000.00” in order to take advantage of their immediate need of emergency funding when they reneged on our long term rental agreement. The Tenants stated that they declined to accept the money, believing that it would mean they “forfeited their claims to be properly reimbursed” for their “efforts and loss of enjoyment”.

The Landlords gave the following testimony:

The Landlords stated that they liked the Tenants when the tenancy began and that they had chosen them over 30 other candidates. The Landlords testified that the Tenants did not complain about anything or talk about any issues they may have had until September, 2016, after the Landlords advised them that they were selling the rental property. The Landlords stated that they did not know that they would be selling the rental property when they signed the lease with the Tenants.

The Landlords denied that the Tenants asked if the house had ever leaked. They submitted that the Tenants asked if there was a history of mould, and that the Landlords assured them that there was not. The Landlords stated that there was never mould in the rental unit and that the contractor opened up the ceiling and showed the Tenants that there was no mould. The Landlords stated that the contractor initially tarped the roof after the leak was discovered in late January, 2016, because of wind and rain. They stated that the contractor repaired the roof as soon as possible, weather permitting. They acknowledged that there had been a slight drip near the chimney but that it only happened once and they forgot about it.

The Landlords disputed that 2/3rds of the rental property was impacted during the repairs to the roof. They estimated that perhaps 1/5<sup>th</sup> of the space was affected, but that the Tenants still had use of the kitchen during repairs. The Landlord stated that the inside of the rental unit was fixed by March 10, 2016, and that the equipment for the roof repair was removed on March 14, 2016. The Landlords provided a copy of the invoice for the cost of repairs and a copy of an e-mail from the contractor with respect to how long the repairs took.

The Landlords testified that they told the Tenants that they could “make the place their own”, but that they never had conversations with the Tenant regarding repairs and never agreed that the Tenants would be compensated for planting trees or repairing the

fence. The Landlords testified that they told the Tenants that they would pay for the paint if the Tenants wished to paint, but that was the extent of their conversations. The Landlords stated that they agreed with the changes because the work was already finished and the Landlords thought that it made the Tenants happy. The Landlords stated that no invoices or receipts were submitted by the Tenants to prove the amount of their claim.

The Landlords denied that they were unjustly enriched by the Tenants' improvements. They stated that the Tenants had destroyed the grass at the rental property. The Landlords testified that the listing realtor had difficulty taking good photos of the rental property because the Tenants kept it cluttered and messy.

### **Analysis**

I reviewed 80 minutes of the parties' oral testimony, more than 100 pages of documents, and the Tenants' electronic evidence prior to writing this Decision. I have limited the Background and Evidence portion of this Decision to the relevant portions of the evidence that was provided by both parties, and which was given to the Residential Tenancy Branch and served to both parties prior to the Hearing.

#### **With respect to the Tenants' application for compensation:**

##### **1. Claim for loss of quiet enjoyment of the rental unit**

I find insufficient evidence that the Landlords misrepresented the condition of the rental unit before the tenancy agreement was signed, or that there was existing mould in the rental unit. The Site Safety Assessment report provided by the Landlords, dated February 18, 2016, indicates that asbestos samples were required and that no asbestos was ultimately found. It also provides that no mould was discovered.

The Tenants discovered a leak on January 28, 2016. Initially, a tarp was placed on the roof. On February 26, 2016, once the weather permitted, roof repairs were underway. The e-mail from the contractor confirms, "We started the emergency on February 25, 2016. Demo was started on March 10 and the job was dry with drying equipment pulled on March 14. Repairs were completed about middle of April."

I find that the Tenants have provided sufficient evidence that the value of the tenancy was impacted by the repairs to the roof, for a period from February 26, 2016 to April 5, 2016. The Tenants seek compensation in the equivalent of the entire rent paid for the period of January 28 to April 5, 2016 (96 days @ \$43.74 per day); however I find that

the Tenants had partial use of the kitchen, living and dining room during that period of time and had full use of the bathroom, their bedrooms and the remainder of the rental property. Therefore, pursuant to the provisions of Section 67 of the Act, I award the Tenants compensation in the amount of \$20.00 per day from February 26, 2016 (when the roof repairs began) to April 5, 2016 (when the Tenants testified that the repairs were completed):

$$38 \text{ days} \times \$15.00 \text{ per day} = \mathbf{\$570.00}$$

The Tenants have applied to be reimbursed for supplies and labour in the total amount of \$1,762.00 for gardening and fence repairs. Residential Tenancy Branch Policy Guideline 1 provides that a tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed. In addition, Guideline 1 provides that a tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence. I find that the Tenants did not provide sufficient evidence that the Landlords had authorized these improvements or that they agreed to reimburse the Tenants for making the improvements. Therefore, this portion of their claim is dismissed.

The Tenants have applied to be reimbursed in the amount of \$534.00 for moving expenses. The Tenants submitted that they would not have moved into the rental unit if they had known that the tenancy was not a “long term” tenancy. The tenancy agreement signed by the parties provides that the tenancy was a one year term lease, and “at the end of this fixed length of time, the tenancy may continue on a month-to-month basis or another fixed length of time”.

Section 49 of the Act provides that a Landlord may end a tenancy if a purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser, or a close family member, intends in good faith to occupy the rental unit. In this case, compensation pursuant to the provisions of Section 51 of the Act is to be paid to the Tenant in the equivalent of one month’s rent before the end of the tenancy. The Tenants did not apply for such compensation in their Application and therefore I make no finding with respect to whether that compensation should be paid, or whether it should be paid by the Landlords or the new owner. This compensation is intended to cover such items as a tenant’s moving expenses. This portion of the Tenants’ claim is also dismissed.

With respect to the Tenants’ application that the Landlords comply with the Act, regulation or tenancy agreement:

The Tenants did not provide the relevant sections of the Act, regulation or tenancy agreement for which they seek the Landlords’ compliance on their Application for

Dispute Resolution. In addition, this tenancy has ended. Therefore, I decline to order that the Landlords comply with the Act, regulation or tenancy agreement with respect to this tenancy.

### **Conclusion**

The Tenants are hereby provided with a Monetary Order in the amount of **\$570.00** for service upon the Landlords. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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 26, 2017

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Residential Tenancy Branch