



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL CNR FF MNDC MNR MND OPC OPL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlords applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities, for Cause, and based on the landlord's use of property;
- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a cancellation of the landlords' notices to end tenancy;
- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants attended the hearing, while landlord S.L. appeared on behalf of the landlords. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords served the tenants with three consecutive notices to end tenancy.

On June 1, 2017, the landlords served the tenants with a 2 Month Notice to End Tenancy for landlord's use of property. Pursuant to section 88 of the *Act*, I find that the tenants were duly served with this notice on the same day as service.

On July 26, 2017, the landlords served the tenants in person with a 1 Month Notice to End Tenancy for Cause. Pursuant to section 88 of the *Act*, I find that the tenants were duly served with this notice on the same day as service.

On August 1, 2017, the landlords served the tenants in person with a 10 Day Notice to End Tenancy for unpaid rent and utilities. Pursuant to section 88 of the *Act*, I find that the tenants were duly served with this notice on the same day as service.

On August 9, 2017 the landlords served the tenants in person with their application for dispute resolution and evidentiary package. Pursuant to sections 88 & 89 of the *Act*, I find that the tenants were duly served with these documents on the same day as service.

On June 28, 2017 the tenants served the landlords in person with their application for dispute resolution and evidentiary package. On August 2 & 14, 2017 the tenants sent the landlords two amendments to their application along with further evidence. Pursuant to sections 88 & 89 of the *Act*, I find that the landlords were duly served with these documents.

Issue(s) to be Decided

Can the tenants cancel the landlords' Notices to End Tenancy? If not, should the landlords be given an Order of Possession?

Is either party entitled to a Monetary Order?

Is either party entitled to a return of the filing fee?

Background and Evidence

Oral testimony was provided at the hearing by the landlord that this tenancy began in October 2014. Rent was \$1,597.00 and a security deposit of \$750.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlords are seeking an order of possession based on various notices to end tenancy, along with a monetary order of \$3,382.79.

The tenants are seeking a cancellation of these notices to end tenancy and a monetary order of \$724.48.

The landlord explained that a 2 Month Notice to End Tenancy was served to the tenants in person on June 1, 2017. He stated that his sister wished to occupy the rental premises, and it was for this reason that the tenants were served with a 2 Month Notice.

Following discussions amongst the parties concerning this end of tenancy, the relationship between the landlords and the tenants became fractured. On July 26, 2017 the landlords served the tenants with a 1 Month Notice to End Tenancy for Cause. The landlord explained that this notice was served on the tenants after it was discovered that the tenants had been subletting the garage without authorization to the downstairs tenants. As part of the landlords' evidentiary package, the landlords' produced a photo of a hand written letter from the downstairs tenants which explained that the respondent tenants had received \$60.00 per month in exchange for allowing the downstairs tenants access to the garage for the storage of their motorbikes.

On August 1, 2017 the landlords served the tenants with a 10 Day Notice for unpaid rent and utilities. The landlord explained that rent and utilities remained unpaid for August 2017. In addition to the unpaid rent, the landlord said that the tenants had agreed to pay \$80.00 per month towards utilities. Following the conclusion of the calendar year, the parties would balance any amounts owed or to be credited for the utilities.

The landlord testified that in addition to an order of possession, the landlords sought a monetary order for the following:

Item	Amount
Unpaid Rent for August 2017	\$1,597.00
Unpaid Utilities for August 2017	80.00
Return of sublet money March 2016 to August 2017	1,020.00
Watering Permit from city	39.55
Replacement of sod/turf	646.24
Total =	\$3,382.79

The landlord stated that rent and utilities were due for August 2017 as the tenants had failed to vacate the premises following the issuance of a 2 Month Notice to End Tenancy given to them in person on June 1, 2017. The tenants denied this, arguing that rent was not due for August as they had been issued a 2 month Notice which had an effective move-out date of August 31, 2017.

In addition to the monetary award sought for this time period, the landlords sought a return of the funds that the tenants had received from the downstairs tenants for the storage of their motorbikes in the garage. The landlords maintain this was an illegal sublet and they should be due any profits which arose from this transaction. The tenants deny that this was a sublet, and maintained that they only rented out a small portion of the garage, while at the same time retaining exclusive occupancy of the rental suite and use of the garage.

The final aspect of the landlords' application for a monetary order involved the replacement of sod and turf on the property. The landlords' maintained that the tenants destroyed large portions of the grassy areas without their consent. While the landlord acknowledged that the tenants had placed seed on the affected areas, the landlord explained that he had grave concerns that this seed would not sprout and that the entire areas would require rolls of turf to replace the dirt which is present. The tenants strongly denied this and contended that the landlords were aware of their gardening activities and permitted them.

The tenants provided a comprehensive package of written submissions at the hearing. During the course of the hearing and in an email dated July 27, 2017, the tenants acknowledged that they accepted the 2 Month Notice to End Tenancy given to them on June 1st.

The tenants therefore sought to cancel the landlord's 1 Month Notice to End Tenancy for Cause and the landlord's 10 Day Notice for Unpaid rent or utilities.

In addition to their application to cancel the landlord's notices to end tenancy, the tenants requested a monetary award of \$724.50. This figure represents the following:

Item	Amount
Compensation for broken fridge	\$150.00
Replacement of BBQ grill cover	74.48
Loss of Quiet Enjoyment	500.00
Total =	\$724.48

The tenants explained that they sought compensation for a fridge that stopped working on June 8, 2017. Following discussions with the landlord, the fridge was replaced on June 18, 2017. The tenants explained that the fridge which the landlords had supplied

to the tenants as a replacement was unusable due to the fact that it was dirty. On June 21, 2017 the landlord came to the rental unit to thoroughly clean the replacement fridge. Following this cleaning, the tenants said they were once again able to use the fridge.

In addition to compensation for the loss of a fridge, the tenants stated that they wanted a monetary award for the replacement of a bbq cover that was destroyed by the landlords when the landlords attempted to fix a seal and stairs that required attention.

The final aspect of the tenants' request for a monetary order was in reflection of a loss of quiet enjoyment that the tenants said they experienced. Notably, the tenants raised concerns with the three notices to end tenancy, offers and negotiations which occurred between the parties urging the tenants to move out, along with a series of events which the tenants described as being attempts by the landlords to get around their obligation associated with the issuance of a 2 Month Notice to End Tenancy.

Analysis – Order of Possession

The landlords sought an Order of Possession based on various Notices to End Tenancy that they had issued to the tenants.

- On June 1, 2017 the landlords hand delivered a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenants accepted this 2 Month Notice. During the hearing the landlord argued that the tenants had in fact overstayed the 2 Month Notice by one month, and he stated that the tenants should have vacated the property by either July 31, 2017 or August 1, 2017. This is incorrect. The 2 Month Notice to End Tenancy was served in person on June 1, 2017, the effective date of this 2 Month Notice is therefore August 31, 2017.

Section 49(2) of the *Act* says:

A landlord may end a tenancy for a purpose referred to in subsection by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, rent was due on the 1st of the month, therefore if the landlords sought an end to the tenancy at the end of July 2017 they would have, pursuant to section 49(2)(b), needed to have served the 2 Month Notice on the tenants on May 31, 2017.

I find based on the oral testimony and the written submissions of the tenants that they accepted the 2 Month Notice to End Tenancy served on them on June 1, 2017 and are therefore permitted to occupy the rental unit until the effective date of the 2 Month Notice, that being August 31, 2017. I find that this tenancy shall end at 1:00 P.M. on August 31, 2017.

As this tenancy is to end on August 31, 2017 by way of the 2 Month Notice, the reasons for the issuance of the 1 Month Notice served on the tenants on July 26, 2017 with a corrected effective date of August 31, 2017 are moot. The landlord's application for a Monetary Order will still be considered in light of the facts surrounding the 1 Month Notice.

The landlords' application for an Order of Possession based on a 10 Day Notice for unpaid rent and utilities is dismissed. Pursuant to section 51 of the *Act* the tenants are entitled to receive from the landlord on or before the effective date of the landlords' notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. In this case, testimony was provided by both parties that rent was not paid on August 1, 2017 because it was the tenants' view that, it was not due under the *Act*.

Analysis – Monetary Orders

Both parties have applied for monetary awards associated with losses that each party felt they had suffered under the tenancy.

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. 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on both parties to prove their entitlement to a claim for a monetary award.

I will begin by examining the landlords' application.

As mentioned previously, the landlords have applied for a monetary order in reflection of; unpaid rent and utilities for August 2017; the return of the money collected from a sublet; the costs associated with the replacement of grass on the property.

I decline to award the landlords any compensation related to unpaid rent for August 2017. I find that this tenancy ended by way of the 2 Month Notice issued to the tenants on June 1, 2017. Under section 51 of the *Act*, the tenants have no obligation to pay rent for the final month of their occupation.

While no rent may be due pursuant to section 51 of the *Act*, a tenant continues to have an obligation to pay utilities associated with a tenancy. In this case, unpaid utilities of \$80.00 remain outstanding. I find that these remain unpaid and the landlord is entitled to a monetary award in satisfaction of these funds.

The landlords sought a monetary award for the money that the tenants received for having received funds renting out the garage to persons who wished to store their motorbikes. The landlords alleged that this was an illegal sublet. *Residential Tenancy Policy Guideline #19* provides some clarity on the issue of sublets. This guideline explains,

The *Residential Tenancy Act* allows a tenant to assign their tenancy agreement and to sublet their rental unit...In most circumstances, unless the landlord consents in writing, a tenant must not assign or sublet. A tenant who assigns their tenancy agreement, or sublets their rental unit, without obtaining the written consent of the landlord, may be served with a One Month Notice to End Tenancy (form RTB-33), pursuant to the Legislation.

I find that the tenants did not sublet their rental unit because they maintained exclusive possession of the unit. They did not move out of the rental unit, nor did they allow any persons to occupy any portion of their rental unit. I find that the tenants entered into a commercial agreement with the downstairs tenants for the storage of their motorbikes. Despite being a problematic undertaking on the part of the tenants, the landlords have no recourse under the *Act* to recover the funds associated with a commercial agreement entered into between two parties. I decline to award the landlords compensation for the funds received by the tenants for renting out a portion of their garage.

The final aspect of the landlords' monetary claim concerns the replacement of sod and grass that the tenants removed as numerous gardens were planted on the property.

During the hearing the landlord explained that the tenants had never been given permission to plant various garden beds and other planter boxes. The landlord contended that this large scale landscaping was done without permission. While the landlord acknowledged that the tenants had removed the garden beds and planter boxes, he explained that the landlords did not anticipate that the grass and seed which the tenants had planted would sprout. The landlords sought a monetary award for the costs associated with the replacement of the lawn and turf.

Obvious efforts to replace the lawn, documented by the tenants show that they have taken steps to return the yard to its natural state. Furthermore, evidence presented at the hearing as part of the landlords' evidentiary package suggests that the landlords were in fact aware of the tenants' actions and no steps were taken by the landlords until the conclusion of the tenancy to voice their opposition to these landscaping endeavours. The tenants have been in occupation of the rental unit since 2014 and there is little evidence to suggest that the landlords took issue with the garden or landscaping prior to the dissolution of their relationship with the tenants. I therefore decline to award the landlords a monetary order associated with the replacement of the lawn and turf.

The tenants have applied for a monetary order related to the loss of a refrigerator, the replacement of a bbq cover and loss of quiet enjoyment related to the rental unit. I will begin by examining the final aspect of their claim, their loss of quiet enjoyment.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. *Residential Tenancy Policy Guideline #6* further discusses the right to quiet enjoyment, stating:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The tenants argued that they were entitled to a monetary award associated with a loss of quiet enjoyment because of the multiple notices to end tenancy that were served on them by the landlords, due to "bad faith" negotiations which the two parties had entered into prior to the hearing and because of continued efforts on the landlords' part to end this tenancy. I find no basis under the *Act* to award compensation. As described in the *Policy Guideline "Loss of Quiet Enjoyment"* is comprised of *frequent and ongoing interference or unreasonable disturbances*. I do not find the actions of the landlord to meet this description.

The second aspect of the tenants' monetary claim relates to the replacement of a bbq cover. The tenants testified that the landlords destroyed the original cover as they attempted to fix some seals on the back deck and replace the stairs. As part of the tenants' evidentiary package the tenants produced a photo demonstrating the resulting stain, along with a copy of a receipt for the purchase of a replacement cover. I find that the tenants have suffered a loss as a result of the landlords' actions and are therefore entitled to a monetary award related to the loss of a bbq cover in the sum of \$74.48.

The final aspect of the tenants' claim relates to the loss of a properly functioning refrigerator from June 8 to June 21, 2017. During the hearing the tenants provided testimony that their freezer broke and was replaced with a dirty fridge which they deemed unsanitary for use. Following discussions with the landlords, this unit was replaced on June 21, 2017. Section 32 of the *Act* along with *Residential Tenancy Policy Guideline #1* explains, "The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant."

I find that while sufficient evidence was presented at the hearing demonstrating the state of the fridge, the landlord acted in expedient manner to rectify the problem. Attempts were made to fix the original broken freezer by the landlord. When the tenants complained to the landlords that these efforts were not adequate, the landlords took further steps to address the issue. As part of their evidentiary package, the tenants submitted receipts demonstrating the loss of food they suffered. A close inspection of the receipts shows that the food items listed were purchased on May 24, 2017 & June 3, 2017 – a significant time prior to the loss of the use of the freezer. Holding the landlords responsible for items purchased days before would place an inequitable burden on the landlords. For these reasons, I decline to award the tenants a monetary award in reflection of this item.

For these reasons, I decline to award the tenants compensation related to the loss of a fridge from June 8 to June 21, 2017.

As both parties were partially successful in their claim, they must each bear the cost of their own filing fees.

Conclusion

This tenancy shall end pursuant to the 2 Month Notice issued on June 1, 2017. I issue an Order of Possession to the landlords, which is to take effect by 1:00 P.M. on August

31, 2017. The landlords are provided with this Order in the above terms and the tenants must be served with this Order in the event that they do not vacate the rental unit. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlords favour in the amount of \$5.52 against the tenants as follows.

Amount	Item
Unpaid Utilities	\$80.00
Less replacement of BBQ cover	74.48
Total =	\$5.52

The landlords provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 28, 2017

Residential Tenancy Branch