



# Dispute Resolution Services

Page: 1

## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding RE/MAX MID ISLAND REALTY PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes CNR MNR MNDC OLC ERP RP PSF RR FF

#### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 20, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation, or the tenancy agreement;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord make repairs to the unit, site, or property;
- an order that the Landlord provide services or facilities required by law;
- an order allowing the Tenants to reduce rent for repairs, services, or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing in person. The Landlord was represented at the hearing by C.S., an agent. All in attendance provided a solemn affirmation.

The Tenants testified that Landlord was served with the Application package and documentary evidence. On behalf of the Landlord, C.S. acknowledged receipt. The Landlord submitted documentary evidence in response to the Application. According to C.S., this was served on the Tenants in person. The Tenants acknowledged receipt of the Landlord's documentary evidence.

No issues were raised with respect to service or receipt of the above documents and evidence. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

The Tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 15, 2017 (the "10 Day Notice"). At the outset of the hearing, the Landlord acknowledged the

Tenants paid rent in full on July 20, 2017. Accordingly, I find rent was paid within five days of receipt of the 10 Day Notice, as required under section 46 of the *Act*. Accordingly, I find the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

#### Issues to be Decided

1. Are the Tenants entitled to a monetary order for the cost of emergency repairs?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, or the tenancy agreement?
4. Are the Tenants entitled to an order that the Landlord make emergency repairs for health or safety reasons?
5. Are the Tenants entitled to an order that the Landlord make repairs to the unit, site, or property?
6. Are the Tenants entitled to an order that the Landlord provide services or facilities required by law?
7. Are the Tenants entitled to an order allowing the Tenants to reduce rent for repairs, services, or facilities agreed upon but not provided?
8. Are the Tenants entitled to an order granting recovery of the filing fee?

#### Background and Evidence

A copy of the tenancy agreement between the parties was submitted with the Landlord's documentary evidence. The parties confirmed the fixed-term tenancy began on April 1, 2017. Rent in the amount of \$1,300.00 per month is due on the first day of each month. However, the parties agreed the Tenants were not required to pay the first month's rent while they cleaned and painted the unit. The Tenants paid a security deposit of \$650.00 and a pet damage deposit of \$650.00, which the Landlord holds.

The Tenant's monetary claim was set out in a Monetary Order Worksheet, dated July 18, 2017. First, the Tenants claimed \$409.48 for duct cleaning. On behalf of the Landlord, C.S. agreed this amount is due to the Tenants.

Second, the Tenants claimed \$490.60 for utilities. On behalf of the Landlord, C.S. agreed this amount is due to the Tenants.

Third, the Tenant's claimed \$50.00 for furnace oil. On behalf of the Landlord, S.C. agreed this amount is due to the Tenants.

Fourth, the Tenants claimed \$3,315.00 to paint the upper unit at the rental property. This amount was based on 110.5 hours of painting charged at a rate of \$30.00 per hour. Contrary to the tenancy agreement and their statements about the tenancy made at the beginning of the hearing, they testified to their understanding the tenancy began on May 1, 2017, and that they should be paid as professional painters for the painting they completed at the rental unit. In support, the Tenants submitted a hand-written receipt, dated May 1, 2017.

In reply, C.S. confirmed that the Landlord disagrees with this aspect of the Tenants' claim. He referred to the Addendum to the tenancy agreement, which states:

*The Tenants will not perform any alterations or construction to the premises without the prior written permission of the landlord.*

[Reproduced as written.]

C.S. confirmed there was no written agreement to pay the Tenants for this work, but acknowledged the Landlord did agree to reimburse the cost of painting materials, which is described below as part of the Tenants' claim.

Fifth, the Tenants claimed \$1,600.00 to clean the rental unit. According to the Tenants, this required scrubbing every surface in the rental unit. In support, the Tenants submitted a hand-written receipt, dated May 1, 2017. The amount sought was based on 64 hours of cleaning at \$25.00 per hour.

In reply, C.S. testified that the Landlord disagrees with this aspect of the claim as the Tenants did not obtain prior approval.

Sixth, the Tenants claimed \$200.00 to clean the lower unit at the rental property. This amount was based on 8 hours of cleaning charged at a rate of \$25.00 per hour. In support, the Tenants provided a hand-written receipt, dated June 1, 2017.

In reply, C.S. agreed this amount was due to the Tenants but was paid to the former tenant of the lower unit.

Seventh, the Tenants claimed \$1,009.11 for painting materials. On behalf of the Landlord, C.S. agreed this amount is due to the Tenants.

Eighth, the Tenants claimed \$786.12 for an overpayment of rent made on July 20, 2017. On behalf of the Landlord, C.S. agreed this amount is due to the Tenants.

Ninth, the Tenants claimed \$41.94 for photocopying and mailing costs in preparation for this hearing.

Finally, the Tenants sought to recover the filing fee paid to make the Application.

#### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

On behalf of the Landlord, C.S. agreed the Tenants were entitled to be reimbursed for the following: duct cleaning (\$409.48); utilities (\$490.60); furnace oil (\$50.00); painting materials (\$1,009.11); and reimbursement of rent overpayment (\$786.12). Accordingly, I grant the Tenants a monetary award of \$2,745.31 for these items.

With respect to the Tenants' claim for \$3,315.00 for painting the rental unit, I find there is insufficient evidence before me to conclude the Tenants are entitled to this amount. At the beginning of the hearing, the parties agreed with respect to the terms of the tenancy. Specifically, the parties agreed the tenancy would commence on April 1, 2017, and that rent would not be due for the first month of the tenancy. In addition, C.S. referred me to the Addendum to the tenancy agreement, which confirmed that "any alterations or construction" required the written approval of the Landlord. While I find that the Landlord did agree to waive April 2017 rent, I find there is insufficient evidence to conclude the Tenants were entitled to receive a further \$3,315.00 as a wage for painting the rental unit. This aspect of the Application is dismissed.

With respect to the Tenants' claim to recover \$1,600.00 for cleaning the rental unit, I find there is insufficient evidence before me to conclude the Tenants are entitled to this amount. The Tenants were presumably aware of the condition of the rental unit when they entered into the tenancy agreement, and could have addressed the need for cleaning at that time.

With respect to the Tenants' claim for \$200.00 for cleaning the lower unit, C.S. confirmed the Tenants are entitled to recover this amount. However, without providing an explanation, C.S. confirmed this amount was paid to the former tenant who occupied the lower unit. As this payment does not impact the Tenants' entitlement to recover the amount agreed to, I grant the Tenants a monetary award in the amount of \$200.00.

With respect to the Tenants' claim for \$41.94 for expenses associated with preparing for the hearing and communicating with the Landlord, I find that these items are not compensable.

As the Tenants have been successful with much of their claim, I find they are entitled to recovery the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$3,045.31, which is comprised of \$2,945.31 for the items agreed upon by the Landlord and \$100.00 in recovery of the filing fee.

I note that the Tenants' evidence and submissions were provided in the context of their monetary claim. Accordingly, the following aspects of the claim have not been considered in this Decision and are dismissed: OLC, ERP, RP, PSF, and RR.

***For future reference, the parties are encouraged to visit the Residential Tenancy Branch website to explore and consider the rights and responsibilities of landlords and tenants under the Act. Sections 16, 26, 32, and 33 of the Act may be of particular interest, as well as Policy Guideline 1.***

#### Conclusion

The Tenants are granted a monetary award in the amount of \$3,045.31. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 6, 2017

---

Residential Tenancy Branch