



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, PSF, RR, FF

Introduction

On May 12, 2017, the Tenants applied for Dispute Resolution seeking compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), Regulation, or tenancy agreement; for emergency repairs; for the Landlord to provide services or facilities; for a rent reduction; and to recover the filing fee. The matter was set for a conference call hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 initial hearing on July 11, 2017 proceeded for 90 minutes which was insufficient time for the parties to provide their testimony and respond. The hearing was adjourned and the Parties were sent a new Notice of Hearing. Both parties appeared at the adjourned hearing.

At the end of the initial hearing, in response to the Tenants’ submissions that the doors to the rental property are not secure, the Landlord agreed that he would attend the rental property to inspect the doors.

At the initial hearing, the Tenants reduced their monetary claim amount of \$29,033.13 to \$25,000.00. The Landlords reduced the amount of rent they are claiming by \$4,033.13.

Issues to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss?
- Are the Tenant's entitled to a rent reduction for the cost of repairs or for a loss of a service or facility.
- Are the Tenants entitled to an order for the Landlord to make repairs to the rental property?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began February 13, 2016, as a fixed term tenancy set to continue until January 31, 2019. Rent in the amount of \$1,900.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$1,900.00 was paid by the Tenants to the Landlord.

The Tenants are seeking compensation as follows:

Storage A	\$3,056.53
Storage B	\$8,800.00
Motel rental	\$626.75
Truck rental	\$549.85
Rent Reduction	\$11,967.00
total	\$25,000.00

Storage A \$3,056.53 and Storage B \$8,800.00

The Tenant's testified that they were told they would have the complete use of the double garage on the rental property. The Tenant's testified that the garage is one third full of the Landlord's possessions. The Tenants testified that the size of the garage is approximately 500 – 600 square feet.

The Tenants testified that they have kept some of their possessions in 8' x10' x 9' foot storage unit because they could not move these items into the house. They testified that the previous Tenants had not moved out when they arrived to move in.

The Tenant s testified that they verbally informed the Landlord that they have their possessions in storage. The Tenant, Mr. K.H. testified that they did not notify the Landlord that he would be responsible for storage costs. The Tenants provided a copy of an email dated February 21, 2016, sent to the Landlord where they mention their possessions are in storage.

The Tenants also testified that they rented another storage unit at the cost of \$550.00 per month. They testified that the storage locker is 16' x 16' x 10'. They testified that they store tools, desks, cabinets and beds.

The Tenant's testified that they found out that the rental unit was not legal and that the walls would need to be opened up. They submitted that it made no sense to move their possessions into the rental unit. The Tenant's testified that they told the Landlord they had this storage unit; however they never informed the Landlord that he was going to be held responsible for the storage costs.

The Tenants provided payment receipts for storage unit A and storage unit B. I note that the company name on the receipts for storage unit A is a Notary Corporation with an address in Saanichton, and the payment date on one of the receipts is prior to the date the Tenants were to move into the rental unit.

The Tenants provided a copy of a tenancy agreement for storage unit B. The agreement indicates the Tenants rented shop storage space from a private individual for \$550.00 per month. The Agreement states the tenancy began on January 15, 2016. I note that the agreement for storage B is also prior to the date the Tenants were to move into the rental unit.

In response, the Landlord testified that the Tenants took possession of the rental unit on February 6, 2017. He testified that the main floor was vacant. He testified that the garage was empty and available for the Tenants use. He testified that it is a huge home. He testified that the square footage is as follows:

- Main floor 1700 square feet
- Basement floor 900 square feet
- Storage rooms 300 square feet
- Garage 500 square feet

The Landlord testified that a table saw, some boxes, and generator remained in the garage when the Tenants moved in. He testified that the Tenant is using 75% of the garage.

The Landlord testified that the Tenant has a business and he uses the storage unit B for business purposes. The Landlord submitted that the Tenants' had rented storage and had items in storage prior to moving in.

The Tenant responded that he was told he would have full use of the garage and he did not have use of approximately 125 square feet.

Motel Rental \$626.75

The Tenants testified that they could not move into the rental unit on February 3, 2017, so they needed to rent a hotel room for three nights. The Tenant's testified that they checked out of the hotel on Feb 6, 2016. The Tenancy agreement states that tenancy begins on February 3, 2016. The Tenants' provided a copy of a document (exhibit 9) that indicates they were willing to pay rent from February 1, 2016, provided the Landlord has the current Tenants possessions out of the property by February 4, 2016.

The Tenants testified that the previous Tenants belonging were still there when the attempted to move into the unit on February 4, 2017. They testified that they could not get in.

The Tenants provided a copy of a MasterCard invoice showing they were charged \$626.75 on February 6, 2016, for a couple nights' stay at a Hotel.

The Landlord testified that the previous occupant left on February 4, 2016, and that the Tenants' could have moved in on the February 4, 2017. The Landlord testified that the only things left behind by the previous occupant were in the garage. The Landlord testified that the Tenants paid full rent for February 2016.

Truck Rental \$549.85

The Tenant's testified that they rented a truck to move their possession to the rental unit. They testified that when they could not move into the rental unit on February 3, 2017, they had to leave their possessions in the truck and they incurred extra charges from the rental company. The Tenants letter to the Landlord (exhibit 9) indicates that it is costing the Tenants \$169.00 per day to have their furniture in the moving truck.

The Tenants provided a copy of a MasterCard invoice showing they were charged \$549.85 on February 7, 2016, for a vehicle rental.

Rent Reduction \$11,967.00

The Tenants testified that they have not had full use of the rental property. They testified that they cannot use both kitchens. The Tenant's provided the following testimony:

- there are no light fixtures in the dining room
- the tiles in upstairs kitchen are not grouted
- they can only use two of three bathrooms because a fixture has fallen off the wall
- upstairs painting is not finished
- entry doors keep coming open
- the dishwasher keeps falling forward
- there is no lock on the patio door to the deck
- there is garbage on the deck
- sundeck is unsafe to use
- the fireplace is not useable
- the Landlord did not provide a lawnmower
- a tree fell on the property
- there is a derelict hot tub on the property
- back fence is falling down
- linoleum needs to be installed

The Tenant's referred to documentary evidence of emails that the parties exchanged from February 2016, to March 2017, in support of their testimony.

The Tenants provided color photographs taken of the interior and exterior of the rental property in support of their testimony.

The Tenants provided a copy of an advertisement for the rental property that states the basement suite may be rented separately for \$650.00 per month. The Tenants testified that the CRD informed them that they could not have a stove in both the upper and lower units.

The Tenants submitted that they are seeking \$1,000.00 per month that they have not had full use of the house and garage and a rent reduction of \$1,000.00 per month every month after the claim was filed until the work is completed.

In response to the Tenant's claim, the Landlord referred to exhibit 9 as an agreement between the parties where the Tenants agreed to take care of painting and perform some repairs at the property. The document indicates that the Tenants offered to do yard work and simple repairs at no cost to the Landlord.

The Landlord testified that there is no agreement requiring him to provide a lawnmower to the Tenants as a condition of them maintaining the property.

The Landlord's legal counsel submitted that the tenancy agreement makes no mention of providing a legal suite and the rental property was accepted "as is". He submitted that it was not a pre-existing term of the tenancy. Counsel submitted that he expects the Tenants are looking to sublet.

The Tenants submitted they are not subletting but they have a live in care-giver.

The Landlord submitted that the Tenants did not provide any notification to him that they would be seeking compensation when they asked for things to be done.

During the hearing the Landlord testified that prior to the reconvened hearing he performed the following repairs:

- Cleaned up the property
- Painted the unit
- Removed broken branches from the property
- Constructed a new deck
- Had a locksmith attend to secure doors
- Steel stairs coming off the deck

At the reconvened hearing, the Landlord testified that he will perform the following repairs within 2 weeks to 30 days.

- Secure the Dishwasher
- Fix or replace bathroom tub water spout
- Secure the mirror in bathroom
- Install linoleum in laundry room
- Remove garbage and debris from rental property
- Repair the fence at back of property
- Secure a hand railing

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Motel Rental \$626.75

I prefer the Tenant's evidence that they were not able to move into the rental unit on February 3, 2017. The Tenants paid the full rent for the month of February 2017. I grant the Tenants' compensation for the cost of the hotel in the amount of \$626.75.

Truck Rental \$549.85

I find that the Tenants were not able to unload the moving truck on February 3rd, and 4th 2016, and I accept that they incurred extra rental charges. I grant the Tenants' compensation for two days of the truck rental in the amount of \$338.00

Storage Unit A \$3,056.53 and Storage Unit B \$8,800.00

I have reduced the Tenants' claim for compensation for storage costs for the following reasons:

The Tenants' had use of the majority of the double car garage and I find that there was no valid reason that the Tenants' could not use the empty areas within the house to store the remainder of their items. I do not find the Tenants' explanation that the suite was not legal to be a reasonable explanation on why they could not use the house for storage. The Tenants failed to notify the Landlord in writing that the Landlord could be responsible to pay their storage costs. In addition, the Tenants did not apply for a hearing to resolve this issue until May 2017, which is more than 1 year after they became aware of the storage problem. I find that the Tenants did not take reasonable steps to minimize the loss.

I accept the Tenant's testimony that he did not have use of 125 square feet for the garage and I grant a reduced amount of compensation after consideration that they could have used the house for storage, and that they could have reduced the claim by applying to resolve this matter earlier. I award the Tenants \$50.00 per month for 19 months for the loss of use of part of the garage.

I award the Tenants \$950.00 for the loss of use of part of the garage.

I find that the tenancy agreement entitles the Tenants to the full use of the garage and I order the Landlord to remove his personal items from the garage within 30 days from the date of this Decision.

Rent Reduction \$11,967.00

While I acknowledge that the Tenants' have provided some emails that were exchanged with the Landlord regarding repairs to the rental property, I find that it is premature to award the Tenants compensation for the items they wish to have repaired or fixed. The Tenants did not fulfill their obligation to do whatever is reasonable to minimize a claim for damage or loss.

The Tenants did not make an application for dispute resolution until more than 1 year after becoming aware of some of the issues. I also note that the Tenants' evidence indicates the Tenants agreed to make minor repairs on the property.

I order the Landlord to repair the following items as discussed in the hearing and set out below. If the Landlord fails to complete the repairs in a reasonable amount of time the Tenants are granted leave to reapply for compensation.

I order the Landlord to make the following repairs:

- Secure the Dishwasher
- Fix or replace bathroom tub water spout
- Secure the mirror in bathroom
- Install linoleum in laundry room
- Remove garbage and debris from rental property
- Repair the fence at back of property
- Secure a hand railing

I do not find that the Landlord is obligated to provide a lawnmower to the Tenants for yard maintenance.

With respect to the legality of the basement suite, I find that there is insufficient evidence from the Tenants that the legality of the suite was a term of the tenancy or that their intention when they entered into the tenancy agreement was to rent out the basement suite to another person. There was insufficient evidence from the Tenants that they had an agreement to rent the suite to another person and that they suffered a financial loss.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were partly successful in their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

In total, I award the Tenants compensation in the amount of \$2,014.75. The Tenants are authorized to reduce future rent payments in the amount of \$2,014.75 in satisfaction of this monetary award.

Conclusion

The Landlord is ordered to make repairs to the rental property as set out above in this Decision. The Tenants have leave to reapply for compensation if the repairs are not completed in a reasonable amount of time.

The Tenants were successful in establishing they are entitled to compensation due to a delay in being able to move into the rental unit.

The Tenants were successful in establishing that there was reduction in value of the tenancy due to loss of use of part of the garage.

The Tenants are awarded the amount of \$2,014.75 and are authorized to withhold this amount towards future rent payments.

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