



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Application made August 20, 2017: MNDC; RR; FF
(amended August 30, 2017, to increase amount of compensation requested)

Introduction

This is the Tenants' Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; a reduction in rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

Both parties were represented at the Hearing and gave affirmed testimony. It was determined that the Tenants served the Landlords with their amended Application and copies of their documentary evidence, by registered mail, on September 6, 2017. It was also determined that the Landlord served each of the Tenants with the Landlord's documentary evidence, by registered mail on October 9 and 31, 2017.

Issue(s) to be Decided

Are the Tenants entitled to compensation for loss of use of a portion of the rental unit, and loss of or damage to the Tenants' belongings?

Background and Evidence

The Tenant AB gave the following testimony:

The Tenants provided a copy of a Notice of Rent Increase issued April 20, 2017. Rent prior to April 20, 2017, was \$2,443.00. Current rent, effective August 1, 2017, is \$2,533.00.

The Tenants provided a Monetary Order worksheet in support of their Application, which provides the following request for relief:

Cost to replace gazebo	\$1,903.99
Cost to replace cedar planter	\$100.00
Cost to replace missing deck chairs	\$56.48
Cost to replace dead plants	\$150.00
Rent reduction for loss of use (7 months)	<u>\$3,591.25</u>
TOTAL CLAIM	\$5,801.72

The Tenant AB testified that there was a history of leaks in the ceiling of rental unit, as follows:

April/May 2013 (bedroom)
March/April 2014 (bedroom)
June/July 2015 (living room)
July 2016 (living room)

AB testified that in December, 2016, another leak occurred in the bedroom. The roof was patched and the leak stopped, but the "crack in the bedroom ceiling was not repaired". On January 20, 2017, the Tenant reported another leak in the living room. The Tenants placed a pot under the leak to catch the water from the leak. On February 6, 2017, AB called the maintenance man again to advise that the living room ceiling was still leaking water. On February 14, 2017, AB called the maintenance man again and left a voice message advising again about the leak in the living room ceiling. "George" (the maintenance man) called back and advised that repairmen would come and patch the roof again. AB called George again on February 28, 2017, and left a voice message advising that the living room ceiling was still leaking and that there was a new leak in a window on the "north-west corner" of the rental unit. George returned his call and advised again that repairmen were coming to patch the roof. On March 1, 2017, George called to say that the roof needs to be replaced, but that it would be patched in the meantime.

Repairs began to the roof on or about March 24, 2017. A hole was cut into the living room ceiling and a fan set up to dry out the ceiling. Living room furniture was moved to accommodate materials (plastic sheeting, ladder, fan, electrical cords), which affected approximately 6 x 5 feet of the living room space.

AB testified that no further repairs were made until May 8, 2017, when the roofers began work. The rental unit includes two balconies (the "North Balcony" and the "South Balcony"). The Tenants had to move items on their balconies to accommodate the work. AB stated that work on the roof replacement appeared to be "substantially complete" on May 12, 2017; however, the Tenants' ceiling was not patched until June 2, 2017.

The Tenants noted a crack in the ceiling on June 13, 2017, and called George to report it, as well as enquire about when work on the Tenants' balconies would be finished. On June 17, 2017, the Tenants received a letter from the Landlord advising them that they must remove their gazebo from the North Balcony. The explanation given to the Tenants was that the gazebo was unsafe and could cause damage or injury. AB testified that the gazebo had been there for 6 years, and that the Landlord was aware that it had been there but had no issue with it being there. George advised AB that the gazebo would have to be moved after the railings were completed on the North Balcony, by August 10, 2017.

The work was completed on the balconies on July 28, 2017. The gazebo was moved at some point during the day on August 9, 2017, without notification to the Tenants. On August 19, 2017, the gazebo was removed.

AB submitted that the Landlord "implicitly accepted" the gazebo for 6 years and that the Tenants should receive compensation for its removal.

AB testified that a planter was destroyed by the roofers, two chairs went missing while the repairs were taking place, and plants died as a result of the lengthy time taken to complete the work.

The Tenants seek compensation for material loss, as follows:

Dead plants (estimate)	\$150.00
Broken cedar planter	\$100.00
Missing deck chairs	\$56.48
Gazebo compensation	\$1,903.99
TOTAL	\$2,210.47

AB testified that the North Balcony was approximately 550 square feet and the South Balcony was approximately 100 square feet. The Tenants seek rent abatement for “7 months” of loss of use of a portion of their living room and their two balconies for 81 days. The Tenants provided photographs of the hole in their living room ceiling and plastic sheeting, etc., and the two balconies at various stages of completion; an invoice for the gazebo; estimates for replacing the chairs and a calculation for the rent abatement they are seeking. The Tenants base their claim for rent abatement, based on a monthly rent of \$2,425.00, as follows:

Cause	% of rent	Duration (months)	Amount claimed	Basis of claim
Water leak	2.47%	4	\$240.00	Previous agreement with Landlord for water leak only
Hole in ceiling	5%	3	\$363.75	% of floor area affected
No balcony	17.73%	3	\$1,290.00	Rent for comparable apartment in neighbourhood, without balcony
Noise and inconvenience	10%	7	\$1,697.50	General inconvenience, noise, frustration
TOTAL			\$3,591.25	

AB stated that the Tenants have not made a claim against their insurance.

AB testified that the Landlord offered compensation in the amount of \$60.00 a month, as a rent reduction, from January 20, 2017 until the “end of May”, but that the Tenants did not accept this offer and the credit still remains on their account. AB testified that the Tenants are going to move out of the rental unit on December 31, 2017.

The Landlord's agent FM gave the following testimony:

The Landlord provided a copy of a tenancy agreement between the Tenant and another occupant. This tenancy began on August 1, 2011. Rent at the beginning of the tenancy was \$2,100.00 per month, due on the first day of each month. The Tenant AB and the other occupant paid a security deposit in the amount of \$1,050.00.

FM testified that the Tenants sublet the rental unit to another occupant for three months and that the Tenants are charging 20% more rent than they are paying. She stated that the Landlord was not consulted contrary to paragraph 16 of the tenancy agreement, and only found out about it at the end of October, 2017.

The Landlord provided a tenant ledger which indicates a rent abatement of \$201.00 in compensation to the Tenants from January, 2017 to April 30, 2017, and an additional \$60.00 in compensation for the month of May, 2017. The ledger shows that the total of \$261.00 remains as a credit to the Tenants' account.

The Landlord provided copies of invoices paid to the roof repair company, dated January 24, March 7, and March 27, 2017, and totalling \$2,920.95, for temporary patching to the roof. FM submitted that these invoices prove that the Landlord acted in a timely manner with respect to the leaks.

The Landlord also provided copies of e-mails between the Landlord and the roof replacement company, indicating that the contract was approved on April 12, 2017, but that weather and "scheduling issues" delayed the project until May 4, 2017 (substantial completion was May 24, 2017). The Landlord also provided copies of invoices for the cost of the roof replacement, which totalled \$70,345.38.

The Landlord provided a copy of an invoice for the cost of drywall repairs to the rental property, dated June 15, 2017. The Invoice indicates that the work on a number of units within the rental property was completed on May 29, 2017; however, repairs to the Tenant's rental unit does not appear to be included in that invoice.

The Landlord provided copies of e-mail correspondence between the Landlord and the roofers and the Landlord and the Tenant AB with respect to the removal of plants and the removal/safety of the gazebo. AB testified that the gazebo that was originally on the Tenants' balcony was replaced by a heavier gazebo. She stated that the Landlord had "no issues" with the first gazebo, which had a canvass top and was removed during the winter, but that the new gazebo was heavier with a steel frame and was placed near a window frame of the rental unit. FM testified that when it rained, the water would run off the gazebo roof and on to the deck, splashing against the window and the wall and causing leaks to the rental unit around the window frame.

AB stated that the roofers claim that they did not take the Tenants' chairs and that the damage to the Tenants' planter was caused by wind. She stated that the planter was already "rickety".

The Landlord also provided photographs depicting upgrades to the Tenants' balconies along with an invoice for deck replacement for 2 decks in the total amount of \$7,875.00.

FM submitted that the Landlord's documentary evidence proves that the Landlord "went above and beyond" with respect to the repairs to the rental property and to the Tenants' rental unit.

The Landlord provided copies of what it submits to be comparable units for rent in the area. FM stated that some of the units don't have views, unlike the rental unit, and that some have little or no decks/balconies. The Landlord's documentary evidence provides for 5 different units, within the same building, with rents ranging between \$3,085.00 and \$4,000.00 per month.

The Tenant AB gave the following reply:

AB stated that the tenancy agreement provided by the Landlord in evidence is not a copy of his current tenancy agreement. He stated that there is a newer agreement which names the new co-tenant. He stated that there is also a dishwasher which was not present when he signed the first tenancy agreement in 2011.

AB adamantly denied subletting the rental unit to anyone.

AB testified that he asked the Landlord if he could safely store his “roof items”, but that he was denied use of the storage facility.

AB disputed that there was any “upgrade” to the balconies. He stated that there were two cedar planters and agreed that one was falling apart, but not the one that he was claiming for. AB stated that the question of whether or not the gazebo was too close to the building was not brought up until now.

AB stated that he would expect rents to be higher in the units the Landlord provided for comparison. He stated that the property was a larger, newer property (10 stories instead of 3 stories, and built recently instead of in the 1950's). He stated that the building containing all the of the comparables has a library, sauna, and a grand piano in the lobby. The Tenant stated that similarly sized and appointed units in the same area as the rental unit, without a balcony, rent for \$1,995.00.

Analysis

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

- 67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

- 28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
 - (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

[Reproduced as written.]

This is the Tenants' Application for compensation and therefore I make no finding with respect to the Landlord's allegation that the Tenants breached the tenancy agreement by subletting the rental unit. The Tenants' Application is the only Application before me.

I dismiss the Tenants' claim for material loss, for the following reasons:

1. I find that the Tenants did not provide sufficient evidence that the chairs were taken by the workers, or that the Tenants have replaced the chairs.
2. The Tenants had insurance, but have not made a claim with their insurer for the loss of or damage to the items, contrary to Section 7 of the Act.
3. Likewise, with respect to the provisions of Section 7 of the Act, the gazebo was approximately one year old and could reasonably be expected to still have some value. The Tenants did not provide sufficient evidence that they attempted to sell the gazebo to help to recover or minimize their loss; or if they did sell the gazebo, what amount they sold it for. In addition, I find that the Tenants did not provide sufficient evidence that the gazebo that was purchased in 2016 was similar to the gazebo that the Tenant AB erected in 2011. Therefore, I do not accept the Tenants' argument that the Landlord had "implicitly accepted" the newer gazebo.

Section 32 of the Act requires the Landlord to provide and maintain the rental unit and rental property in a state of repair that complies with the health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by the Tenants.

Based on the oral testimony and the documentary evidence provided by both parties, I find that the Landlord complied with Section 32 of the Act. I also find that the Landlord acted in a reasonably timely manner, considering the circumstances of the leaks and the age of the building.

However, I find that the Tenants did not have full use of the rental unit and that the value of the tenancy was reduced as a result of that loss of use. I find that the Tenants are entitled to compensation for loss of use of a portion of the rental unit.

Residential Tenancy Policy Guideline 6 provides, in part:

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[Reproduced as written.]

The Landlord acknowledged that the Tenants suffered “inconvenience” with “dealing with the rook leak” and offered compensation for that inconvenience. Therefore, I allow that portion of the Tenants’ claim, as claimed, in the amount of \$261.00 for emptying the container during the water leak in the living room. I find that the Tenants did not provide sufficient evidence of noise, inconvenience or frustration to support an additional claim in the amount of \$1,697.50.

I find that the Tenants are entitled to compensation for loss of use of a portion of the living room as claimed, based on square footage. Using the same logic, the balconies consisted of approximately 40% of the total square footage of the rental unit and the balconies combined. However, the Tenants are only seeking 17.73% of the rent for 3 months, which I find to be reasonable. Therefore, this portion of their claim is also allowed.

The Tenants’ claim had merit and I find that they are entitled to recover the cost of the filing fee from the Landlord.

The Tenants have established a monetary award, calculated as follows:

Compensation for emptying containers and “inconvenience”	\$261.00
Compensation for loss of use of a portion of the living room	\$363.75
Compensation for loss of use of balconies	\$1,290.00
Recovery of the filing fee	<u>\$100.00</u>
TOTAL	\$2,014.75

Conclusion

The Tenants are hereby provided with a Monetary Order in the amount of **\$2,014.75** for service upon the Landlord. This Order may be enforced in 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: December 18, 2017

Residential Tenancy Branch