



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATUS TECH CAPITAL CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR ERP FFT MNDCT MNRT PSF RP RR OPU MNRL-S
MNDCL-S FFL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent and utilities pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent VK (the “landlord”).

As both parties were present service was confirmed. The tenants confirmed receipt of the 10 Day Notice of October 5, 2018 and testified that they served the landlord with their application for dispute resolution and evidence on or about October 8, 2018. The landlord confirmed receipt of the tenants' materials. The landlord testified that they served their application for dispute resolution and evidence on or about October 12, 2018. The tenants confirmed that they had been served with the landlord's materials. Based on the undisputed testimonies of the parties I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord indicated that since the application was filed the additional utilities have become due. The landlord said that the new amount owing for utilities is \$2,249.47. The landlord did not submit any documentary evidence in support of this utility arrears amount. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I find that allowing the landlord to amend the monetary amount sought for unpaid utilities without documentary evidence would be unfairly prejudicial to the tenants and I consequently decline to the amend the landlord's application changing the amount of their monetary claim.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is either party entitled to a monetary award as claimed?

Are the tenants entitled to recover the costs of emergency repairs made during the tenancy?

Are the tenants entitled to reduce the rent for services or facilities not provided by the landlord?

Should the landlord be ordered to make repairs or provide services or facilities?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in December, 2017. The monthly rent is \$2,500.00 payable on the first of each month. A security deposit of

\$1,250.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at the start of the tenancy.

The landlord submitted a copy of the tenancy agreement into written evidence. The tenancy agreement provides that the tenants are responsible for paying all utilities. The landlord issued a 10 Day Notice dated October 5, 2018 on the tenants for unpaid rent of \$2,500.00 and utility arrears of \$1,487.00. The tenants confirm that they have not paid rent for October or November, 2018 and have not paid any amount for utilities.

The tenants submit that the rental unit is in need of repairs and maintenance. The tenants testified that they have been without hot water or heat in the rental unit and the landlord has failed to make repairs despite numerous requests. The tenants submitted into evidence photographs of areas of the rental building. The tenants testified that water leaks occurred on three separate occasions during the tenancy in April, July and September, 2018. The tenants say that the landlord failed to take adequate and timely action when the leaks were reported. The tenants testified that they continue to live without hot water or heat and have had to live without these basic amenities. The tenants said that they have continued to reside in the rental unit as they have no other options.

The tenants submitted into evidence a property inspection report dated October 12, 2018 which they commissioned. The report lists a number of issues the inspector found with the rental building. The tenants testified that while they continue to reside in the rental unit they feel it is unsafe for habitation. The tenants testified that there are areas of the rental building that they are unable to use or occupy due to the deficiencies.

The tenants seek a monetary award in the amount of \$29,025.00 for the following items:

Item	Amount
Cost of Emergency Repairs Made – Reimbursement of Rent for Tenancy	\$25,000.00
Compensation for Monetary Loss – Cost of Inspection, repairs, Labour, Filing Fees, Fridge & Stove	\$1,525.00
Rent Reduction – October	\$2,500.00
TOTAL	\$29,025.00

The tenants seek the cost of emergency repairs made and claim an amount equivalent to the rent paid for this tenancy, \$25,000.00. The tenants seek compensation for

damages and loss in the amount of \$1,525.00 and submit that they incurred costs for commissioning the property inspection, repairs made and their labour costs. The tenants also submit for the fridge & stove but have not articulated what these costs are in relation to, whether these appliances were replaced or repaired.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In the present case the parties agree that the tenants have failed to pay rent for the months of October and November, 2018 and there is a rental arrear of \$5,000.00. The tenants submit that they should not be obligated to pay the rent as the rental unit is in need of repairs and maintenance.

Section 26(1) of the *Act* provides that:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 33 of the *Act* provides that a tenant may deduct from their rent the amount paid for emergency repairs in specific circumstances. A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) Emergency repairs are needed;
- (b) The tenant has made at least 2 attempts to telephone, at the number provide, the person identified by the landlord as the person to contact for emergency repairs;
- (c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In order to claim the costs of emergency repairs the tenant must provide the landlord with a written account of the repairs accompanied by receipts for the amounts claimed.

The tenants claim an amount of \$25,000.00 for the cost of emergency repairs. The tenants testified that the amount does not correspond to actual work done on the rental unit but simply the reimbursement of monthly rent paid throughout this tenancy. Based

on the evidence of the tenants I find that the amount claimed is not the cost of emergency repairs and therefore the tenants have no basis to claim the amount or make a deduction from the payment of the monthly rent.

I find that monthly rent in the amount of \$2,500.00 was payable on the first of each month. I find that the tenants' complaints and issues they took with the condition of the rental unit did not suspend their obligation to pay the monthly rent in the amount of \$2,500.00 on the first of each month. I accept the evidence of the parties that the tenants did not make payment for October or November, 2018. Accordingly, I dismiss the tenants' application to cancel the 10 Day Notice.

As I have dismissed the tenants' application to cancel the 10 Day Notice I issue an Order of Possession in the landlord's favour. As the effective date of the 10 Day Notice has passed I issue an Order effective 2 days after service.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The landlord seeks a monetary award in the amount of \$6,400.00. The landlord claims the unpaid rent for October and November in the amount of \$5,000.00 and the utility arrears of \$1,400.00. I accept the parties' evidence that the tenants have not paid the rent or utility arrears for this tenancy. I accept the landlord's evidence in testimony and the utility bill submitted into written evidence that there is an arrear of \$1,400.00. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$6,400.00.

The tenants seek a monetary award of \$29,025.00. The tenants claim for the cost of emergency repairs of \$25,000.00 as well as reduction of rent of \$2,500.00 for October, 2018 and loss of \$1,525.00. I find that the tenants have provided insufficient evidence

in support of their monetary claim. The tenants have not shown that they incurred any costs for emergency repairs. The tenants testified that the amount of \$25,000.00 sought is the equivalent of the return of rent paid for this tenancy. I find that the rent paid is not the cost of emergency repairs and consequently this portion of the tenant's application is dismissed.

The documentary evidence of the tenants consists primarily of photographs of the rental unit. In addition the tenants submit a property inspection report dated October 12, 2018. The tenants have not submitted any receipts or invoices for the cost of repairs. Based on the minimal evidence of the tenants I am unable to find that there has been any loss incurred such that the tenants are entitled to a monetary award. I dismiss this portion of the tenant's application.

The tenants claim the amount of \$2,500.00 the equivalent of one month's rent for the loss of value of the tenancy agreement. I find that there is insufficient evidence in support of this portion of the tenants' claim. The tenants testified that they have occupied and resided in the rental building throughout the term of this tenancy. While the tenants gave some testimony about not being able to use the entirety of the rental suite they provided little details of any limitations they suffered. I find the property inspection report submitted by the tenants to be generally irrelevant. The undisputed evidence is that the tenants occupied the rental unit during the tenancy and are continuing to do so regardless of what the inspection report says.

I find that there is little evidence that the tenants have suffered any loss in the value of this tenancy and consequently dismiss this portion of the tenant's application.

As I have found that the landlord is entitled to an Order of Possession I find it unnecessary to make a finding on the portions of the tenants' application seeking a repair order and order that the landlord provide services or facilities.

As the landlord's application was successful the landlord may recover their filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,250.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises 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 landlord's favour in the amount of \$5,250.00 under the following terms, which allows the landlord to recover unpaid rent, utilities and the filing fee for their application:

Item	Amount
Rent Arrears	\$5,000.00
Utility Arrears	\$1,400.00
Filing Fee	\$100.00
Less Security Deposit	-\$1,250.00
Total Monetary Order	\$5,250.00

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: November 8, 2018

Residential Tenancy Branch