



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER LUXURY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP FFT MNDCT OLC RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

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 SK (the "landlord").

As both parties were in attendance service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that the landlord was served with the tenant's application and evidence and the tenants served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties testified that repairs had been made to the rental unit. The tenants withdrew their application save for the outstanding issue of a monetary award.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

The parties agreed on the following facts. This tenancy began in May, 2018. The monthly rent is \$2,450.00 payable on the first of each month. The rental unit is a two-bedroom, two-bathroom unit in a multi-unit building.

The tenants were made aware from previous tenants that the shower in the second bathroom had issues in the past. After moving in to the rental unit the tenants discovered that the issues with the shower had not been resolved and repairs were required. The parties testified that the shower in the second bathroom was unusable from May, 2018, the start of the tenancy, to October, 2018.

The tenants testified that because of the lack of a second bathroom they were unable to host friends who intended to stay with them. The tenants testified that the landlord did not communicate with them in a clear and transparent manner and they were not kept updated on the repairs that were being performed. The tenants submit that the shower repairs required multiple visits by contractors and during that time the tenants were required to take time to allow the tradespeople access to the rental unit.

The landlord testified that the repairs to the rental unit were performed in a professional manner by licensed contractors and done within a reasonable period of time. The landlord testified that the tenants have been compensated for the loss of value of the tenancy by the landlord. The parties testified that the tenants were paid \$204.00 for each of the months that the second bathroom shower was unusable for a total amount of \$1,224.00. The landlord testified that the amount was calculated based on the square footage of the rental suite, the amenity that was unavailable and the monthly rent.

The tenants acknowledge that they have received some payment from the landlord but seek an additional monetary award of \$4,776.00 for their losses. The tenants gave evidence about the inconvenience and the impact that the loss of use of the second shower had on their plans to house guests. The tenants testified that the experience in dealing with the landlord has been frustrating as they were unable to communicate directly and clearly and were not kept apprised of the work being done.

Analysis

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 parties agree that the tenants have already received some money from the landlord for the loss of use of the shower in the second bathroom. The tenants submit that the amount does not fully compensate for the effect that the loss of use of the shower and the accompanying repairs had on the tenants.

I find there is insufficient evidence in support of the tenants' claim. The tenants testified that the shower is located in the second bathroom and they were able to use the main bathroom throughout this time. Furthermore, the landlord provided undisputed testimony that the second bathroom is a three piece bathroom and the only affected portion was the shower. The other remaining facilities were functional and available at all times. The primary effect that the tenants testified the loss of the second shower had was that they were unable to host guests. I find that there is little evidence that the loss of the shower had a significant material effect on the day to day routine of the tenants.

The tenants testified about the inconvenience of allowing contractors access to the rental unit but I find that this is not a result of any contravention of the *Act*, regulations or tenancy agreement by the landlord. Similarly, while the tenants may have been frustrated by the sparse communication with the landlord I find that the landlord did not violate the *Act*, regulations or tenancy agreement in their conduct. I find there is insufficient evidence in support of the tenants' application for a monetary award. Consequently, I dismiss the application.

Conclusion

The tenants' application is dismissed without leave to reapply.

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 9, 2018

Residential Tenancy Branch