



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC CNR ERP FFT MNDCT MNRT OLC RP

### Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- an Order to end the tenancy pursuant to section 45;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlords to make emergency repairs to the rental unit pursuant to sections 33 and 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and,
- reimbursement of the filing fee pursuant to section 72.

TG, landlords' representative, appeared on behalf of the landlords. Tenant KW appeared on behalf of the tenants. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords acknowledged receipt of the tenants' Notice of Hearing and Application for Dispute Resolution, tenants' amendment and tenants' evidence package. The tenants acknowledged receipt of the landlords' evidence package. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Settlement of Possession Date

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled a portion of their dispute and the following records this settlement as a Decision:

The Parties mutually agreed as follows:

- The tenancy shall continue until 1:00 pm on March 31, 2019 and the landlords are granted an Order of Possession in accordance with that date.

These terms comprise the full and final settlement of the dispute relating to the possession of the rental unit. All other aspects of the tenants' application remain pending. Both parties testified they understood and agreed the above terms are final, binding, and enforceable, and this part of their dispute.

Based on the above, I find that all matters in relation to the possession of the rental unit between these parties in this application are resolved pursuant to the above agreed terms.

#### Preliminary Matter: Personal Injury Claims

The tenant agreed to sever his claims for personal injuries incurred as a result of falling through the hand rail pursuant Residential Tenancy Branch Rules of Procedure section 2.3. I dismiss the tenant's personal injury claims with leave to reapply.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to an order to the landlords to make emergency repairs to the rental unit pursuant to sections 33 and 62?

Are the tenants entitled to a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33?

Are the tenants entitled reimbursement of the filing fee pursuant to section 72?

#### Background and Evidence

The parties agreed that this was a fixed term tenancy commencing on October 19, 2018 and ending on June 30, 2019. The tenancy agreement stated rent of \$2,550.00 payable on the first

day of each month. The tenant paid a security deposit of \$1,250.00 and no pet damage deposit. A copy of the tenancy agreement was provided.

The parties completed a condition inspection report on move in. The parties did not provide a copy of the condition inspection report. However, the landlord did provide a copy of an addendum to the condition inspection report which stated the following: "D. Repairs to be completed at start of tenancy: (list repairs)\_\_\_\_\_". The response to this heading was blank. The addendum to the condition inspection report was signed by the tenants and the landlords.

The tenants testified that the rental unit had many deficiencies when they moved which affected the enjoyment of the property. Specifically, the tenants claimed the following defects and impingement on the use of the rental unit.

The tenants testified that the garage door remotes were missing from the property.

The tenants testified that the yard was overgrown and they needed to perform fifteen hours of landscaping services to cut and the cut and remove overgrown foliage upon move in.

The tenants testified that rental unit was very dirty when he moved. The tenants testified that he needed to spend ten hours of cleaning the rental unit upon move in.

The tenants testified that a window screen was missing from the rental unit.

The tenants testified that the refrigerator was broken and did not close properly when they moved in the rental unit. The tenants testified that food spoiled as result of the broken refrigerator. The tenant testified that the refrigerator was repaired on January 30, 2019. The landlords testified that the refrigerator door could be closed if it was closed carefully

The tenants testified that the stove did not work when they moved into the rental unit. They testified that the stove was repaired on January 30, 2019.

The tenants testified that that dishwasher did not work when they moved into the rental unit. They said the dishwasher was repaired on February 15, 2019.

The tenants testified that they incurred excessive gas bill because cold air came from the refrigerator. The tenants testified that they also incurred excessive electrical bills because the refrigerator door did not close tightly.

The tenants testified that the handrail on the stairs broke on December 11, 2018 when the tenant fell over the rails. The tenant testified that this was not repaired.

The tenants testified that they were disturbed by the house security alarm being activated for a full day. The tenants testified that they were unable to de-activate the alarm.

The tenants testified that there was no heat available in the rental unit for one week. The tenants testified that the heating system was linked to the alarm and they were unable to get heat after the alarm malfunctioned.

The tenants testified that the thermostat in the house broke so they replaced the thermostat themselves.

The tenants complained that they were disturbed by numerous contractors entering the rental unit to make repairs. The tenants testified that ten contractors came to the rental unit during the tenancy.

The tenants complained that a break and entry occurred at the rental unit without signs of forced entry. The tenants argued that the landlord must have permitted someone else to have access to the property since there were no signs of forced entry.

The tenants complained that one of the bathtubs would not hold water.

The tenants testified that the kitchen sink was leaking.

The tenants complained that the cupboards in the kitchen cabinet were broken. The landlord testified that the cupboards were broken, there were simply missing the plastic shelf holders which have a nominal cost.

The tenants testified that one of the rooms, which they referred to as the computer room, did not have blinds. The tenancy agreement stated that window covering were included.

The tenants requested reimbursement of moving expenses because they claimed that they needed to move as a result of the deficiencies in the rental unit.

The tenant requested reimbursement of litigation expenses including photocopy costs, flash drive costs and preparation time for this hearing.

The tenants claimed personal injury damages from falling down the stairs.

The tenants provided numerous photographs of the conditions of the rental unit.

The landlords acknowledged that rental unit had some deficiencies but they testified that most of the problems have been repaired.

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The landlords acknowledged that rental unit had some deficiencies, but they testified that most of the problems have been repaired.

### Analysis

The parties agreed on the following compensation:

<u>Item</u>	<u>Amount</u>
Garage door openers	\$55.00
Landscaping	\$150.00
House cleaning	\$150.00
Window screen repair	\$75.00
Gas and electric bills	\$50.00
Thermostat replacement	\$50.00
Lack of heating	\$75.00
Total agreed compensation	<b>\$605.00</b>

Accordingly, I will allow tenants' claim for \$605.00 for the agreed claims. The remaining claims for damages are disputed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 65(1)(c) and (f) of the *Act* states:

**Director's orders: breach of Act, regulations or tenancy agreement**

**65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

- (c) that any money paid by a tenant to a landlord must be
  - (i) repaid to the tenant,
  - (ii) deducted from rent, or
  - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

...

- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Section 65 of the *Act* allows me to issue a monetary award to compensate the tenants if I determine that there has been non-compliance with the *Act*, regulations or a tenancy agreement. The tenants have requested compensation for numerous deficiencies in the rental unit which the tenants contend have reduced the value of the tenancy agreement. Each of the tenants' claims are addressed as follows:

#### *Broken refrigerator*

I am not satisfied that the tenant has sustained any compensable loss on the balance of probabilities as a result of the broken refrigerator door. I find the landlord's testimony that the refrigerator door could be fully closed if it was closed carefully to be credible. I find that the tenant could have mitigated any losses relating to the refrigerator by operating the refrigerator carefully.

#### *Non-functioning stove*

I am satisfied that the stove was not working until it was fixed on January 30, 2019 and I find that a reasonable estimate of the amount of the tenant's loss regarding the loss of use of the stove to be 1% of the monthly rent. Accordingly, I shall award the tenant \$76.50 in compensation for the loss of quiet enjoyment of the property relating to the non-functioning stove, calculated as follows:

$$(\text{Monthly rent of } \$2,550.00) \times (1\%) \times (3 \text{ months}) = \$76.50$$

#### *Non-functioning dishwasher*

I am satisfied that the dishwasher has not been working until February 15, 2019 and I find that a reasonable estimate of the tenant's loss regarding the loss of use of the dishwasher to be 1% of the monthly rent. Accordingly, I shall award the tenant \$102.00 in compensation for the loss of quiet enjoyment of the property relating to the non-functioning dishwasher, calculated as follows:

$$(\text{Monthly rent of } \$2,550.00) \times (1\%) \times (4 \text{ months}) = \$102.00$$

*Broken handrail on stairs*

I find that a damaged or missing handrail on stairs is a serious safety hazard and this condition does have a significant adverse affect on the tenant's use and enjoyment of the rental unit.

*Residential Tenancy Policy Guideline #16* states that a tenant's damages are not limited to physical property only, but they also include less tangible impacts such as loss of access to any part of the residential property provided under a tenancy agreement. I find that a loss of safe access up and down stairs is a significant impairment on the tenant's use of the rental unit. I find that a reasonable estimate of the amount of this loss is 10% of the monthly rent. Accordingly, I shall award the tenant \$510.00 in compensation for the loss of quiet enjoyment of the property relating to the missing handrail, calculated as follows:

$$(\text{Monthly rent of } \$2,550.00) \times (10\%) \times (2 \text{ months}) = \$510.00$$

*Interruptions by contractors*

I am not satisfied that the tenant has sustained any compensable loss as a result of the landlord's contractors attending to the property to make repairs requested by the tenant. Accordingly, I deny the tenant's request for compensation relating to interruptions by contractors.

*Break and entry into the rental unit*

I am not satisfied that the break and entry into the rental unit was the result of any breach of the tenancy agreement by the landlord. Accordingly, I deny the tenant's request for compensation relating to the break and entry.

*Kitchen faucet leaking*

I am satisfied that kitchen sink has been leaking and I find that a reasonable estimate of the amount of this loss is 1% of the monthly rent. Accordingly, I shall award the tenant \$102.00 in compensation for the loss for non complying with the tenancy agreement of the property relating to the leaking kitchen faucet, calculated as follows:

$$(\text{Monthly rent of } \$2,550.00) \times (1\%) \times (4 \text{ months}) = \$102.00$$

### *Broken Cupboard*

I am not satisfied that the kitchen cupboards were not functional. Accordingly, I deny the tenant's request for compensation relating to the cupboards.

### *Computer Room Blinds Missing*

Since the tenancy agreement states that window coverings are included and the computer room does not have blinds, I am satisfied that the lack of blinds in the computer room is compensable. I find that a reasonable estimate of the amount of this loss is 1% of the monthly rent. Accordingly, I shall award the tenant \$102.00 in compensation for the for non complying with the tenancy agreement of the property relating to the lack of computer blinds, calculated as follows:

$$(\text{Monthly rent of } \$2,550.00) \times (1\%) \times (4 \text{ months}) = \$102.00$$

### *Moving expenses*

I find that the tenant's moving expenses would be incurred by the tenant regardless of the condition of the property. Accordingly, I deny the tenant's request for moving expenses.

### *Litigation expenses*

I find that the tenant's photocopy costs and hearing preparation costs are not recoverable claims in Residential Tenancy Branch hearings. Accordingly, I shall deny these claims.

According, I find that the tenant is entitled to compensation in the amount of \$1,497.50 as follows:

<u>Item</u>	<u>Amount</u>
Agreed compensation	\$605.00
Non-functioning stove	\$76.50
Non-functioning stove	\$102.00
Broken handrail on stairs	\$510.00
Kitchen faucet leaking	\$102.00
Computer room blinds missing	\$102.00
<b>Total</b>	<b>\$1,497.50</b>

The tenant did not present any evidence in support of his claims for emergency repairs. Accordingly, the tenant's request for emergency repairs are dismissed.



Since the tenant has been generally successful in this application, I grant the tenant reimbursement of the filing fee.

Accordingly, I find that the landlord is entitled to a monetary award of \$1,597.50 calculated as follows.

<u>Item</u>	<u>Amount</u>
Compensation for the tenant	\$1,497.50
Filing fee	\$100.00
Total monetary award	<b>\$1,597.50</b>

### Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, which is to take effect by 1:00 p.m. on March 31, 2019. The landlords are provided with this Order in the above terms and the tenant must be served with this Order. If the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,597.00** comprised of \$1,497.50 for monetary compensation for deficiencies in the rental unit and \$100.00 for reimbursement of the fee paid by the tenant for this application.

The tenant's claims for damages for personal injuries is dismissed with leave to reapply. All other claims are 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: February 27, 2019

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Residential Tenancy Branch