



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC MNR MNSD FF
Tenant: CNR ERP OLC RP RR MNRT FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on March 15, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- an order permitting the Landlords to retain the security deposit in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on March 7, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlords make emergency repairs for health or safety reasons;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlords make repairs to the unit, site, or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;

- an order that the Tenants be paid back for emergency repairs made during the tenancy; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlords testified the Landlords' Application package was served on the Tenants by registered mail on April 22, 2019. The Tenants acknowledged receipt. No issues were raised during the hearing about receipt of the Landlords' Application package. Pursuant to section 71 of the *Act*, I find the Tenants' Application package was sufficiently served for the purposes of the *Act*.

The Tenants testified the Tenants' Application package was served on the Landlords by leaving a copy on the doorstep of the Landlords' residence. Although not served in accordance with the *Act*, the Landlords acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Tenants' Application package was sufficiently served for the purposes of the *Act*. However, the Tenants testified they were unable to serve the Landlords with the documentary evidence upon which they intended to rely. I do not accept they were unable to do so as they know where the Landlords reside. Therefore, as the Landlords were not served with the Tenants' documentary evidence, it has not been considered in this Decision.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed the Tenants vacated the rental unit on April 30, 2019. Therefore, only the monetary claims advanced by the parties have been considered in this Decision.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to an order permitting the Landlords to retain the security deposit in partial satisfaction of the claim?
3. Are the Landlords entitled to recover the filing fee?
4. Are the Tenants entitled to an order reducing rent for repairs, services or facilities agreed upon but not provided;
5. Are the Tenants entitled to an order that the Tenants be paid back for emergency repairs made during the tenancy; and
6. Are the Tenants entitled to an order granting recovery of the filing fee.

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on May 1, 2018, and was expected to continue to April 30, 2019. As noted above, the Tenants vacated the rental unit on April 30, 2019. During the tenancy, rent in the amount of \$3,000.00 per month was due on the first day of each month. Despite what is stated in the tenancy agreement, the Landlords testified the Tenants paid a security deposit in the amount of \$1,225.00 and did not pay a pet damage deposit of \$250.00. The Tenants disagreed and stated that work performed at the rental property was worth \$275.00 and brought the security deposit paid to \$1,500.00, as stated in the tenancy agreement.

The Landlords' Claim

The Landlords testified the Tenants did not pay rent when due on March 1 and April 1, 2019. The Landlords testified the rental unit was not re-rented for May 1, 2019, but M.T. confirmed the Landlords were claiming unpaid rent for March and April only.

In reply, the Tenants acknowledged rent was not paid as claimed. They testified that rent was withheld due to a number of issues with the rental unit, including:

- Broken stairs
- Mold
- Rats
- A badly damaged deck
- Gardening and landscaping performed at the beginning of the tenancy
- Cleaning required at the beginning of the tenancy.

The Tenants advised that the Landlords were made aware of these concerns in an email, which was denied by the Landlords.

The Landlords also sought an order permitting them to retain the security deposit in partial satisfaction of the Landlords' claim, and to recover the filing fee paid to make the Application.

The Tenants' Claim

The Tenants sought a rent reduction in the amount of \$9,000.000 (\$1,000.00 per month for 9 months) for issues described above.

In addition, the Tenants claimed \$2,174.17 for emergency repairs made during the tenancy. However, C.J.S. specifically testified that the only emergency repair was related to 2 holes in the deck. The Tenants did not provide any testimony in support of the amount claimed. As noted above, the documentary evidence submitted by the Tenants has not been considered in this Decision.

The Tenants also sought to recover the filing fee paid to make the Application.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, each party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that each party did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

With respect to the Landlords' claim for unpaid rent, section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the Landlords complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The Tenants acknowledged rent was not paid on March 1 and April 1, 2019, as claimed by the Landlords. They stated rent was withheld because the Landlords did not address the concerns they brought to the Landlords' attention during the tenancy. However, I find there is insufficient evidence before me to conclude that the Tenants' concerns gave rise to a right under the *Act* to withhold rent. Therefore, I find the Landlords are entitled to a monetary award in the amount of \$6,000.00 for unpaid rent that was due on March 1 and April 1, 2019. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Landlords' Application. In the circumstances, I find it is appropriate to order that the Landlords may retain the security deposit held in partial satisfaction of the Landlords' claim. In the absence of sufficient evidence of the value of work performed by the Tenants, or of any supporting agreement between the parties, I find the amount of the security deposit held by the

Landlords is \$1,225.00. The Tenants did not dispute that a pet damage deposit was not paid.

Pursuant to section 67 of the *Act*, and in light of my findings with respect to the Tenants' Application, described below, the Landlords are granted a monetary order in the amount of \$4,875.00, which has been calculated as follows:

Claim	Amount awarded
Unpaid rent:	\$6,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,225.00)
TOTAL:	\$4,875.00

The Tenants' Claim

With respect to the Tenants' claim for a \$9,000.00 rent reduction, section 65(1) of the *Act* permits the director to order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

In this case, I find there is insufficient evidence before me to grant the relief sought. The Tenants' documentary evidence was excluded from consideration, and I am not satisfied the issues raised by the Tenants give rise to a rent reduction. I also note there was no evidence before me to suggest that the Tenants previously submitted an application for dispute resolution relating to their concerns, which were raised only after being served with a notice to end tenancy for unpaid rent or utilities. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$2,174.17 for emergency repairs, section 33 of the *Act* confirms that "emergency repairs" are those that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property, and; made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or in prescribed circumstances, a rental unit or residential property.

In this case, I find there is insufficient evidence before me to grant the relief sought. On behalf of the Tenants, C.J.S. testified that deck repairs were the only emergency repairs needed. Specifically, the Tenants referred to 2 holes in the deck. Deck repairs are not an emergency repair under section 33 of the *Act*. Further, no evidence was provided by the Tenants in support of the amount claimed. This aspect of the Tenants' Application is dismissed.

The Tenants' application is dismissed, without leave to reapply.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlords are granted a monetary order in the amount of \$4,875.00. The monetary order may be filed in and enforced as an order of 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: May 6, 2019

Residential Tenancy Branch