



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, OLC, RP  
OPM, FFL

### Introduction

This hearing dealt with the Tenants' adjourned Application and the Landlords' Application for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenants' Application for Dispute Resolution was made on January 8, 2019. The Tenants applied to request an order for the Landlord to comply with the *Act*, for an order for the Landlord to make repairs to the rental unit, and for a monetary order for damage or compensation under the *Act*. The Landlords' Application for Dispute Resolution was made on June 24, 2019. The Landlords applied for an order of possession pursuant to section 55 of the *Act*, and to recover their filing fee.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter – Settlement Agreement

During the hearing, both parties agreed that they had signed a Mutual Agreement to End Tenancy and that the Tenant had not moved out in accordance with that agreement, on June 30, 2019. Both parties also agreed that the Landlord had

submitted an application for dispute resolution on June 24, 2019, requesting an order of possession to enforce the Mutual Agreement to end the tenancy and to recover the filing fee for their application.

Both parties requested that the Landlords application be dealt with during these proceedings. and expressed a desire to enter into a settlement agreement on a date for the Tenants to move out of the rental unit.

Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement:

1. The Tenants will move out of the rental unit no later than July 11, 2019, at 1:00 p.m.

The above terms of the settlement agreement were reviewed with all parties during the hearing, and all parties confirmed that they were entering into the settlement agreement on a voluntary basis. Both parties were also advised that I have made no determination regarding any claim that the Landlords may have regarding the Tenants overholding the rental unit.

I will still consider the Landlords request for the recovery of the filing fee for their application in this hearing.

#### Preliminary Matter – Order for Regular Repairs and Compliance with the Act

As this tenancy is ending as of July 11, 2019, I find that there is no need for an order for the Landlord to make repairs or to comply with the *Act*.

Therefore, I dismiss the Tenants' request for an order for the Landlord to make regular repairs to the rental unit and for an order for the Landlords to comply with the *Act*.

I will continue in these proceedings on the Tenants claim for compensation for damages or compensation under the *Act*.

### Issues to be Decided

- Are the Tenants entitled to a monetary order for damage or compensation under the *Act*?
- Are the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties agreed that this tenancy began on September 1, 2017, as a one-year fixed term, which was renewed on June 1, 2018, for an additionally one-year fixed term tenancy. Both parties also agreed that they signed a Mutual Agreement to End Tenancy on June 30, 2019. The Landlords and Tenants agreed that rent in the amount of \$2,595.80 were to be paid by the first day of each month, and the Tenants had paid a \$2,495.00 security deposit at the outset of this tenancy. Both parties agreed that the security deposit was eventually reduced to \$1,247.50.

The Tenants testified that the Landlords had not maintained the rental property throughout their tenancy and that they have suffered a loss of quiet enjoyment due to the Landlords failure to respond to their requested for repairs. The Tenants are claimed for \$34,362.00 in compensation due to the Landlord's failure to maintain the property and loss of quiet enjoyment.

#### Tenants compensation requests breakdown:

\$112.00	Overcharging a security deposit
\$250.00	Failure to change furnace filters
\$350.00	Failure to change furnace filters
\$1,500.00	Failure to maintain smoke alarms
\$1,700.00	Failure to clean the outside of the windows
\$1,700.00	Failure to paint the interior of the house
\$850.00	Failure to clean out the exhaust pipes and outside vents
\$1,500.00	Failure to cut and prune trees at back yard
\$1,700.00	Failure to cut and prune trees at the front yard
\$500.00	Failure to clean air duct
\$1,700.00	Failure to change exterior doors locks
\$1,500.00	Failure to fix the electrical problem in living area and kitchen
\$1,700.00	Provide locks or locking devices on all exterior windows
\$1,500.00	Failure to cut and remove the broken tree
\$200.00	Failure to fix stove problems

\$1,700.00	Failure to replacement of heating furnace
\$1,500.00	Failure to fix attic insulation
\$1,700.00	Failure to fix leaky windows and leaky exterior doors
\$8,500.00	Health problems because of a cold house, leaky windows, insufficient attic insulation, inefficient heating furnace and old furnace filters.
\$2,500.00	Health problems because of delaying duct cleaning
\$1,700.00	Energy loss due to inefficient house

The Landlords testified that each time the Tenants provided them with a written request to make repairs to the rental unit, they completed the repairs in a timely manner. The Landlords agreed that the rental property is an older home and can be drafty, but the rental property met all building code requirements when they purchased the property in 2007 and that they have kept up with all repairs.

The Tenants testified that they believe that they are due compensation for the Landlords overcharging them their security deposit, at a rate of \$7.00 per month for 16 months. Both parties agree that the Landlords collected a full month's rent as the original security deposit for this tenancy and that when both parties released it was too much, the overpayment was returned to the Tenants. The Landlords disagreed that any compensation should be due to the Tenants for this as it was corrected as soon as they found out about the error.

The Tenants testified that the Landlords did not change the furnace filters as required and that they are requesting \$250.00 for the period of September 2017 to January 2018 and 350.00 for the period between May 2018 to November 2018, at a rate of \$50.00 per month in compensation for the Landlords failure to change the furnace filters as required and their resulting exposure to unfiltered air. The Tenant testified that the furnace filters were to be changed every one to three months. The Landlords disagreed, testifying that the furnace filters only need to be changed every six to nine months and that the filters had been changed in early 2018 and again in December 2018. The Landlords testified that currently the furnace filter is in good condition and do not require changing until the fall of 2019.

The Tenants testified that the Landlords did not properly maintain the smoke detector in the rental unit during the tenancy. The Tenants are requesting \$1,500.00 in compensation for the Landlord not properly maintaining the smoke detectors. The Landlords testified that the Tenants had agreed that they would test the smoke detector monthly, during the tenancy, and that they would report and defect to the Landlords for

repair. The Tenants testified that they had agreed to test the smoke detector monthly and that they had not reported any defects to the Landlord. When asked why they had filed for this portion of their claim when they had never reported a problem, the Tenants testified that someone had advised that that the maintenance if the smoke detectors were the responsibility of the Landlord and that they should not be doing it.

The Tenants testified that the Landlords did not clean the outside windows of the rental unit on a regular basis. The Tenants are requesting \$1,700.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to clean the outside windows on the rental property. The Tenants testified that the unclean windows obscured their view and devalued the rental unit. The Landlords testified that the windows are clean and do not require cleaning.

The Tenants testified that they had requested that the interior of the rental unit is painted but that the Landlords had refused. The Tenants are requesting \$1,700.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to paint the interior of the rental property as they had requested. The Landlords testified that the rental unit had been painted in 2016 and did not require additional painting.

The Tenants testified that they had notified the Landlords on November 16, 2018, by email that the exhaust pipes and outside vents required cleaning in the rental unit and that the Landlords had not completed the repairs until February 2019. The Landlords testified that they had not received this emailed request from the Tenant and that they were unaware of the exhaust pipes and outside vents required cleaning. The Landlords agreed to complete the exhaust pipes and outside vents during the hearing.

The Tenants testified that the Landlords had not provided regular pruning of the trees in the front yard of the rental unit. The Tenants are requesting \$1,700.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to cut and prune the trees in the front yard of the rental property. The Landlords testified that the trees on at the front of the rental unit are on city property and that they did not have the right to prune those trees. The Landlords agreed that they had received the Tenants request to prune the trees and that they had submitted a formal request to the city to prune the trees as the Tenants had requested.

The Tenants testified that the Landlords had not provided regular pruning of the trees in the back yard of the rental property. The Tenants have requested \$1,500.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to prune trees in the back yard of the rental property and an additional \$1,500.00 for the Landlords

failure to remove a fallen tree branch from the back yard. The Tenants testified that they had sent an email, to the Landlord in January 2018, requesting pruning of the trees in the back-yard and that a branch that had fallen be removed. The Landlords testified that they received a written request for the Tenants to prune the trees and remove the fallen branch on November 15, 2018. The Landlords testified that they completed the requested work on December 8, 2019. The Tenant submitted a copy of the January email he had sent the Landlord into documentary evidence, confirming that he never received a response for that email. The Landlord testified that he did not get an email from the Tenant in January 2018, requesting this repair.

The Tenants testified that they had notified the Landlords on November 16, 2018, by email that the exhaust pipes and outside vents required cleaning in the rental unit and that the Landlords had not completed the repairs until February 2019. The Tenants are requesting \$850.00 in compensation due to the delay in the Landlords having the ducts cleaned. The Landlord testified that they were notified by the Tenants in writing on January 4, 2018, that the ducts required cleaning, and that the ducts were cleaned on February 6, 2018. The Tenants provided the email string between the Landlord and themselves, dated January 4 to Feb 6, 2019, into documentary evidence.

The Tenants testified that they had notified the Landlords in December 2017, that they wanted the exterior locks to the rental unit changed. The Tenant is requesting \$1,700.00 in compensation due to the Landlords' refusal to change exterior doors locks. The Landlords testified that they have no requirement to change the lock to a rental unit during the tenancy, only at the beginning. The Tenants testified that they did not ask at the beginning because they did not know they could.

The Tenants testified that they had verbally notified the Landlords, in September 2017, of an electrical problem in the living room and kitchen area of the rental unit and that the Landlords did not repair the problem until December 2017. The Landlords testified that they received written notification of an electrical issue in the rental unit in November 2018 and that they made the requested repairs on December 15, 2018. The Tenants testified that they provided a written request to the Landlord for the need electrical repairs on November 16, 2018.

The Tenants testified that the Landlords did not provide locks on the windows of the rental unit as required, the Tenants are requesting \$1,700.00 in compensation for Landlords' failure to provide locks or locking devices on all exterior windows. Both parties agreed that the Landlords did provide a custom-made locking device for the windows in the rental unit. The Tenant testified that the custom-made locking device did

not function adequately. The Landlord testified that the custom-made locking device was an adequate lock for the windows in the rental unit.

The Tenants testified that they had requested that the Landlords repair the stove in the rental unit and that the Landlords had not completed the requested repairs. The Tenants are requesting \$200.00 in compensation for Landlords' failure to fix a blown light in the stove, to fix the stove door that was hard to open and to install the anti-tipping device as suggested by the manufacturer. The Landlords testified that they had received the Tenants' request to have the noted repairs made to the stove and that they had sent a technician to the rental unit to assess the need for repairs. The Landlords testified that the stove technician had reported back to them that there was nothing wrong with the stove light or door and that the anti-tipping device was not required by industry standards. The Landlords agreed that the Tenants request for the unit-tipping device to be installed was refused as it is not a building standard requirement for their area.

The Tenants testified that they are requesting \$6,600.00 in compensation in loss of quiet enjoyment; consisting of \$1, 700.00 for the Landlords' failure to replacement of heating furnace, \$1,500.00 for the Landlords' failure to replace attic insulation, \$1,700.00 for the Landlords' failure to fix leaky windows and leaky exterior doors, and \$1,700.00 energy loss due to inefficient house. The Tenants testified that the Landlords failure to provide an energy efficient rental unit, caused them to have to live in a constant state of coldness and that their pre-existing health issues had been greatly affected due to their inability to heat the old drafty house adequately. The Tenants submitted four letters from their physician explaining their health conditions into documentary evidence.

The Landlords testified that they provided a rental unit that met all the building code standards as required for the area and that the Tenants were requesting upgrades not repairs. The Landlord testified that they completed all legitimate request for repairs but that they were not prepared to upgrade the property.

The Tenants testified that they are requesting \$11, 000 in compensation for loss of quiet enjoyment due to the increased health problems they suffered due to living in a cold house, with leaky windows, insufficient attic insulation, inefficient heating furnace, old furnace filters and delayed duct cleaning. The Tenants testified that the Landlords refusal to provide a warm home to live, which resulted in additional health issues that would not have been present if the home had been adequately heated.

The Landlord testified that they provided a rental unit that met all building codes of the area, that the furnace work as required and that there was a wood burning fireplace that could be used for additional heat. The Landlord testified that they are not responsible for the Tenants health issue.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

The Tenants have requested \$112.00 in compensation for being overcharged for their security deposit. The Tenants were advised during the hearing that there was no provision in the *Act* that would provide compensation for an over charged security deposit. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$650.00 in compensation for the Landlords failure to change the furnace filters as required. I find that the parties, to this dispute, offered conflicting verbal testimony regarding how often the furnace filters need to be replaced during this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Tenants. I find that there is insufficient evidence, before me, to show to my satisfaction that the Landlords have not to change the furnace filters as required. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,500.00 in compensation for the Landlord, not property maintain the smoke detectors during the tenancy. I find that the parties, to this dispute, entered into an agreement that the Tenants would conduct the regular checks of the smoke detectors in the rental unit and would report any need for repairs to the Landlord. I accept the testimony of the Tenants that they had not reported any defect to the smoke detectors to the Landlords. Consequently, I find that Landlords have maintained the smoke detectors as required, and I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,700.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to clean the outside windows on the rental property. I have reviewed all of the Tenants' evidence submission, and I find that there is insufficient



evidence to support their claim for \$1,700.00 in compensation for the loss of quiet enjoyment due to dirty windows. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,700.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure paint the interior of the rental property as they had requested. I accept the Landlords' testimony that the rental unit had been painted in 2016. I have also reviewed the Tenant evidence, and I find that there is insufficient evidence to support the Tenants claim that the interior of the rental unit required a fresh coat of paint after three years. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$850.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to clean out the exhaust pipes and outside vents. I accept the Landlords' testimony that he was unaware of the exhaust pipes and outside vents required cleaning before this hearing. I have reviewed the Tenant evidence, and I find that there is insufficient evidence to support the Tenants claim that that had requested that the exhaust pipes and outside vents be cleaned. I find that there is a duty for a tenant to request, in writing, that repairs be made before making a claim for compensation. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,700.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to cut and prune trees in the front yard of the rental property. I accept the Landlords' testimony that the trees at the front of the rental property are the cities trees and that he has submitted a request to the city to have them pruned. Additionally, I find that the Tenants have not provided sufficient evidence to support their claim for \$1,700.00 in compensation for the loss of quiet enjoyment due to the trees not being pruned, or that the Landlords were negligent in their request to the city to have the requested pruning completed. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,500.00 in compensation for the loss of quiet enjoyment due to the Landlords' failure to prune trees in the back yard of the rental property and an additional \$1,500.00 for the Landlords failure to remove a fallen tree branch from the back yard. I accept the Landlords' testimony that they received the Tenants' request to prune the trees in the back yard and remove the fallen tree branch dated November 15, 2018. I also accept the agreed upon testimony that the pruning had been completed and the fallen branch removed within three weeks of the Tenants written request, on December 8, 2019. I find that three weeks to completed tree pruning to be a reasonable

amount of time to a Landlord to complete a requested repair. I acknowledge that the Tenants' testimony that they sent an email, to the Landlord requesting the back-yard work in January 2018 but I find that they have not provided sufficient evidence to show that the Landlord had received their emailed request. As the Landlords completed this request in a timely manner, I find that the Tenants are not entitled to compensation, and I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$500.00 in compensation due to the Landlords' failure to clean out the air ducts. I have reviewed the Tenant evidence, and I find that there is insufficient evidence to support the Tenants claim that that had requested the Landlords clean the air ducts in the rental unit cleaned in November 2017. I accept the Tenants documentary evidence that they had requested the air ducts be cleaned in January 2018 and find that the Landlords took appropriate action upon receiving the January 2018 request, and had the air ducts had been cleaned in a timely manner. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,700.00 in compensation due to the Landlords' failure to change exterior doors locks, that they had requested be changed in December 2017. Section 25 of the Act allows a Tenant to request that the locks to a rental unit be changed, at the Landlord's expense, at the beginning of a tenancy.

**Rekeying locks for new tenants**

**25 (1)** At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

As this tenancy started on September 1, 2017, I find that the Tenants request for the locks to be replaced was made four months after the tenancy started, not at the beginning of the tenancy as required. I find that section 25 of the *Act*, did not apply to the Tenants December 2017 request and that there was no requirement under the *Act*, for a landlord to change to locks for a rental unit, mid-tenancy. Accordingly, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,500.00 in compensation for Landlords' failure to repair an electrical problem in the living room and kitchen area. I acknowledge the Tenants' testimony that they had verbally told the Landlord about the problem in September 2017

by that they had not made a written request for repairs until November 2018. I accept the agreed upon the testimony of these parties that the Landlord had been provided with a written request to fix the electrical issue in November 2018 and that the Landlords had attended to the request for repairs by December 15, 2018. I find that the Landlords completed this request in a timely manner after receiving proper notification or the needed repair. As Such, the Tenants are not entitled to compensation, and I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$1,700.00 in compensation for Landlords' failure to provide locks or locking devices on all exterior windows. I accept the testimony of both parties that the Landlords had custom-made locking devices created for each window in the rental unit. I find that the parties, to this dispute, offered conflicting verbal testimony regarding the functionality of these locks. Again, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Tenants. I have reviewed the Tenants evidence submissions, and I find that there is insufflate evidence, before me, to show that the window lock provided by the Landlords was insufficient for security. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have requested \$200.00 in compensation for Landlords' failure to repair the stove. I accept the agreed upon testimony of both parties that the Landlords had received the Tenants' request to have the stove repairs completed and that the Landlords had sent a technician to attend the rental unit to assess the need for repairs. I also accept the testimony of both parties that the technician had reported that there was nothing wrong with the stove. I have reviewed the Tenants evidence and find that there is insufficient evidence before me that the stove provided to them needed to be repaired or that the requested safety bracket they wanted to have installed was required under local building codes. As such, I dismiss this portion of the Tenants' claim in its entirety.

I will address four of the Tenants claims for compensation for loss of quiet enjoyment together, totalling \$6,600.00; for failure to replacement of heating furnace, failure to replace attic insulation, failure to fix leaky windows and leaky exterior doors, and energy loss due to the inefficient house.

I accept the Tenants testimony and medical documentary evidence, that the Tenants suffer from medical conditions that make them sensitive to cold temperatures and that this sensitivity affects their quiet enjoyment of life. However, I find that the Tenants' sensitivity to cold was not caused by the Landlords nor or the rental property.

After reviewing the Tenants' application and evidence, I find that the Tenants request for compensation for loss of quiet enjoyment is more in the nature that the Landlords did not provide them with a higher end, more energy efficient rental unit. I have reviewed all the evidence submissions, and I find that there was no refusal on the Landlords part, to make needed repairs to the rental unit, as the Tenants are claiming.

I have also reviewed the inspection report provided by the Tenants, and I find that there is no mention of the rental unit not meeting the building code standards for the area or that the furnace, windows, doors and fireplace required repairs. I agree that suggestions for upgrades to the property were made in that report, but I can find no provision in the *Act* that would require a Landlord to make those suggested upgrades to their property.

Overall, I find that the Landlords, in this case, provided a rental unit that met with the building codes for their area and that all requested for required repairs were completed in a timely manner. I find that the Tenants have not provided sufficient evidence to prove that the Landlords had breached the *Act* in any way during this tenancy.

Additionally, I find that there is no obligation for the Landlords, in this case, to provide the upgrades to the furnace, windows, doors, and fireplace that the Tenants had requested. Therefore, if there is no requirement to provide the requested upgrades, I find that the Landlords were not responsible for the Tenants loss of quiet enjoyment due to their refusal to upgrade the furnace, windows, doors, and fireplace in the rental unit .

The Tenants have also requested a total of \$11,000.00 in compensation due to health problems caused by living in a cold home, with leaky windows, insufficient attic insulation, inefficient heating furnace, old furnace filters and delayed duct cleaning. I have reviewed the evidence submissions by the Tenants, and I find that there is insufficient evidence to prove, to my satisfaction, that the Landlords or the rental property were the cause of their claimed medical conditions. I also find it unreasonable that the Tenants would have signed a new fixed term tenancy, after living in this rental unit for 10 months, if it had been the cause of their medical problems. As such, I dismiss this portion of the Tenants' claim in its entirety.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords had been successful in their application for an order of possession, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlords to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I dismiss the Tenants' application for damages or compensation under the *Act* in its entirety.

I grant an Order of Possession to the Landlords effective not later than 1:00 p.m. on July 11, 2019. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the award contained in my decision.

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: July 5, 2019

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Residential Tenancy Branch