



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC LAT LRE OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on December 2, 2019, and January 24, 2020. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

One of the Tenants, R.T., was present for the first hearing, along with both of the Landlords. Service of the documents was reviewed at the start of the first hearing when both parties were present. The Tenants did not attend the second hearing, held on January 24, 2020. The Landlords attended both hearings, and the second hearing proceeded in the absence of the Tenants.

The Tenant confirmed receipt of the Landlord's evidence package. However, the Landlord uploaded a document 6 days prior to the hearing. As explained in the hearing, the Landlord, as the respondent, had to ensure the Tenant received these documents no later than 7 days prior to the hearing. As this was not done, this particular document will not be considered. Only the Landlords' first and main package will be considered.

The Landlord confirmed receipt of the Tenants' application, both amendments, as well as the documentary evidence. The Landlord did not take issue with the service of these documents. During the hearing, I noted that the Tenant uploaded a few last minute documents (timeline of events, mould expert document, and bathroom fan document). These documents were sent to the Landlord on November 22, 2019, by registered mail. As the applicant on this file, the Tenants were required to ensure the Landlord received their evidence no later than 14 days before the hearing, which would have been November 18, 2019. Documents not served within time will not be considered.

Furthermore, I note the Tenants included a USB stick in with their amendment package sent to the Landlord. I note the Landlord expressed that they were not able to open all of the files the Tenant submitted to them on a USB drive. The Tenant explained that there were several videos put onto the USB stick, and it was included with their first amendment.

I turn to the following Rule of Procedure:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I note the Tenants included several video files on the USB stick. Although the Landlords confirmed they got the USB stick, they were unable to read all of the files. There is no evidence showing that the Tenants attempted to confirm that the Landlords were able to read the evidence contained on the drive, or that they were able to gain access to it. As such, I find the Tenants failed to serve their digital evidence in accordance with the Rules of Procedure. The Tenants should have taken steps to ensure and confirm their digital evidence was accessible. I find the Tenants' digital video evidence is not admissible, as it was not properly served in accordance with the Rules of Procedure (3.10.5).

Both parties were provided 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. However, only the evidence that was specifically referred to and submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

In the Tenants' first amendment, they applied to cancel a 1-Month Notice for Cause (the Notice) issued to them on October 3, 2019. The Tenants subsequently moved out, and did not pursue their application to cancel the Notice. Given the Tenants moved out, rather than dispute the Notice, I find the tenancy is over. The Landlord no longer requires an order of possession. Given all of this, I dismiss the Tenant's application to cancel the Notice, without leave. The Tenants chose to move out, rather than dispute it and attempt to continue the tenancy.

In the Tenants' second and most recent amendment, they updated the amounts they were seeking, and also removed the following grounds on from their application:

- I want the landlord to comply with the Act, regulation and/or the tenancy agreement
- I want to suspend or set conditions on the landlord's right to enter the rental unit or site
- I want authorization to change the locks to the rental unit

Given the above, I find the only grounds left to consider are as follows:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the *Act*?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The parties agree that the tenancy started around February 13, 2018, and ended when the Tenants moved out on November 14, 2019. Monthly rent was set at \$1,400.00 per month and was due on the first of the month. The Tenants rented a 1 bedroom unit above the garage. The house adjacent to the garage was a separate rental unit.

The Tenants filed this application for many different items. However, they subsequently amended their application to change their claim. The most recent amendment filed and served by the Tenants, they indicated they were seeking monetary compensation based on 4 items, as follows (as per the updated monetary order worksheet):

- 1) \$1,400.00 – One month's rent compensation
 - 2) \$335.67 – "Estimate" for cleaning supplies to keep windows free of mold
 - 3) \$219.80 – 30% reimbursement of hydro bills over winter/spring of 2019
 - 4) \$5,600.00 – 4 month's rent reimbursement for "wrongful eviction"
- Total = \$7,555.47

The Tenants stated that the rental unit was "uninhabitable" and they are seeking one month's compensation as a result (item #1). The Tenants explained that there were two main issues behind this request.

First, they took issue with the fact that the windows in the rental unit were older aluminum windows, and accumulated lots of condensation. The Tenants cited health concerns, but did not present any evidence showing medical issues as a result of the mold around the windows. The Tenants stated that they had to live with moldy windows and despite cleaning them very regularly, the windows kept accumulating mold.

Second, the Tenants pointed to the unpermitted work and the illegality of the suite. The Tenants stated that there were some electrical deficiencies, and the suite was not fully to building code or fully permitted.

The Tenants are also worried about the long term effects of living with mold.

The Landlord explained that the Tenants complained to them about the windows in early January 2019, and they had a window company come to look at them. The Landlord provided a copy of an email from the window company suggesting that the windows in place were not problematic, and the moisture issues would be best addressed by upgrading the fans.

The Landlord stated that they also scheduled a mold inspector to come in and he recommended that the Landlords install a dehumidifier and a HEPA filter to mitigate some of the moisture issues. The Landlord stated they provided a dehumidifier to the Tenants but they were not happy with it and refused to use it because it was old. The Tenants claim the dehumidifier was moldy but provided no evidence to support this. The Landlord also stated that the Tenants refused to use a HEPA filter, which was purchased for them. The Landlord stated that they also upgraded the bathroom fan and did what they could to address the Tenants' concerns.

The Landlords stated that the Tenants failed to clean the windows properly. Despite it being the Tenants responsibility to keep the windows clean, the Landlords stated they offered the Tenants assistance with keeping the windows clean (the Landlord offered to pay for a cleaner). The Landlords stated that the Tenants refused their help and insisted that the windows be replaced.

The Tenants provided a list of items on Amazon showing what it costs approximately to buy cleaning supplies. However, they did not provide a receipt or any way to show what they actually bought and what they paid for any of these items. The Tenants

estimate that the window cleaning cost them \$335.67 (item #2 above), and they are seeking this amount back.

The Landlords feel this is the Tenant's responsibility to keep the inside of the windows clean. Further, the Landlords stated there was nothing actually wrong with the windows, yet they still offered to pay for cleaners to come and help keep the windows mold free.

The Tenants are also seeking reimbursement of their "excessive" hydro bills for late 2018 and early 2019. The Tenants had their own separate hydro meter and provided a bill to show what they paid for this period. They are seeking 30% back, amounting to \$219.80 (item #3 above). The Tenants stated that the rental unit was heated by baseboard heat and it should not have been so expensive.

The Landlords explained that this unit has a separate meter, and the Tenants rent the 1 bedroom unit above the garage, plus the 2 car garage below. The Landlords explained that this is all under the same utility bill, and since the Tenants were home a lot of the time, it is not unreasonable for the bills to be what they were.

The Tenants are also seeking 4 month's compensation for "wrongful eviction", amounting to \$5,600.00 (item #4). The Tenants explained that they had concerns that the Landlord was not complying with building codes and Residential Tenancy Branch laws and they had many conversations with the Landlord over permits, building codes, and issues with the suite. The Tenants stated that after some of these issues accumulated, and the relationship between the parties continued to degrade, the Landlord issued a 1-Month Notice to End Tenancy for Cause in late September/ early October 2019.

The Tenants stated they initially filed to dispute the Notice but changed their mind, and decided to move out and seek compensation instead. The Tenants stated they repeatedly asked for permits from the Landlord for the work they were wanting to do (smoke alarms, electrical work) but the Landlord would not give them what they were looking for. The Tenants gave a written letter to the Landlord stating they could not come in to do the scheduled electrical work without fully complying with new building codes, and hiring certified contractors with proper permits.

The Tenants stated they denied the Landlord access on September 23, 2019, because they were not satisfied that the Landlord had a proper permit, to perform

the full scope of work. The Tenants stated they were “wrongfully evicted” because they wanted repairs done properly. The Tenants stated the Landlord promised to fix the windows at the start of the tenancy, and also told them it was a legal suite. The Tenants feel they were lied to.

The Landlords explained that the Tenants decided they wanted to get new windows early in 2019 and things started to degrade since that time. The Landlords explained that they had window companies come by to inspect the windows, and offer solutions. The Landlords also stated they hired a mold company to come and ensure there were no significant issues. They also stated they offered to have the windows cleaned, inside, at the Landlord’s expense to try and make them happy. The Landlords explained that the Tenants kept asking for things, but in turn would make it difficult for them to access the unit and perform the repairs. The Landlord stated that they not only brought in window and mold experts, but also paid a handyman to fix the bathroom fan, and gave the Tenants a dehumidifier to help with any excess moisture.

The Landlord stated that they issued the 1 Month Notice to the Tenants because the Tenants complained about issues with the smoke detectors and then wouldn’t allow the Landlord access. The Landlord explained that they gave around a weeks notice that they would be coming in to install a new smoke alarm. The Landlords stated that when they showed up on September 23, 2019, the Tenants would not let them in because they did not believe all the paperwork and permits were in order. The Landlord stated that they had full permits from Technical Safety BC, and the municipality. The Landlords provided an email to prove they had the permits necessary to do the work, yet the Tenants would not let them in. Subsequently, the police were called, and the situation continued to escalate.

The Landlords provided a copy of the permit issued, and it shows the Landlord had a permit to move the existing smoke alarm. The Tenants took issue with this permit because they believe it should have been more comprehensive and included installing additional smoke alarms, interconnected with the other unit.

The Landlord explained that they had a licenced electrician show up to do the work, but he was refused entry by the Tenants. The Landlords stated that the Tenants made so many aggressive demands, and were so difficult to deal with that they started to become fearful of their next moves.

Analysis

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 in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I turn to the first item on the Tenants' worksheet: \$1,400.00 – One month's rent compensation. During the hearing, the Tenants focused on two main issues to support why they should get this compensation. The Tenants first pointed to the old aluminum windows, which accumulated moisture and were difficult to keep clean. I acknowledge that older windows can require more maintenance than newer windows. However, this type of maintenance must be weighed against what is reasonable for the age and character of the building. I find there is insufficient evidence that the windows were in a state of repair such that they required replacement or that the cleaning that was required is beyond what would be considered reasonable or normal for the type of window and the season.

I turn to Residential Tenancy Policy Guideline #1 - Landlord & Tenant – Responsibility for Residential Premises, which states as follows:

WINDOWS

The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

Although the Tenants were not pleased with having to clean the windows so frequently, I find they are responsible for this maintenance in the absence of evidence showing the windows were leaking, defective, or broken.

The Tenants also pointed to the unpermitted work and the illegality of the suite. The Tenants stated that there were some electrical deficiencies, and the suite was not fully to building code or fully permitted. The Tenants stated they want this portion of compensation because the unit was “inhabitable”. However, I find the Tenant’s have failed to sufficiently demonstrate that the rental unit was uninhabitable, or that its state of decoration and repair was such that they ought to be entitled to a rent reduction or compensation for loss of quiet enjoyment/loss of use.

Although the Tenants were not satisfied with the windows, some of the building deficiencies, and the Landlord’s actions/inactions surrounding repairs and permits, I find they have provided insufficient evidence to establish that they are entitled to compensation for the “inhabitable” conditions they allege. I find there is insufficient evidence that the mold was present in significant quantities, beyond what would be considered normal. Ultimately, I find the Tenants have failed to prove this portion of their claim. I dismiss their request for 1 Month’s compensation due to inhabitable conditions.

With respect to the second item on their worksheet, I note the Tenants are seeking compensation for cleaning supplies they used up in trying to keep the windows clean and mold free. However, I find this type of cleaning is the responsibility of the Tenant, in the absence of evidence showing the windows were defective or broken. Further, the Tenants did not provide actual receipts or proof of what they actually paid for cleaning product, as they only provided an approximation. I dismiss this item, in full.

With respect to the Tenants third item I note the Tenants are seeking 30% of their BC Hydro bills back over the winter of 2019. However, there is insufficient evidence to show why they are not responsible for this amount. The Tenants have also not sufficiently explained how they arrived at the amount of 30%. The tenancy agreement provided into evidence shows the Tenants are responsible for the full electrical bill for this unit. I note they are on a separate hydro meter from the rest of the house, and although the Tenants allege that some of the circuits were not properly separated out between the units, I find the Tenants have failed to demonstrate what, if any impact this would have had on their bill. The Landlords stated that the unit was fully separate and that any usage on the Tenants' bill was directly due to their use over the winter. Ultimately, I find the Tenants have not sufficiently proven that they are entitled to this amount.

With respect to the 4th item on the Tenant's worksheet, I note they are seeking 4 month's rent as compensation for what they allege is a wrongful eviction. I acknowledge that the overall relationship degraded significantly over the last couple months of the tenancy, and the Tenants were not pleased with the repairs, or lack thereof, and disputes arose over what work was to be completed and by whom. I acknowledge that the Landlord's issued a 1 Month Notice to the Tenants. However, the Tenants could have disputed this Notice, but instead they chose to move out. The Tenants could have remained in the unit until a hearing was concluded and a decision was rendered pertaining to the validity of the Notice. It was the Tenants' choice to move out rather than dispute the merits of the Notice. I find there is insufficient evidence the Tenants were wrongfully evicted. I find the Tenants are not entitled to compensation for this item.

As the Tenants were unsuccessful with their application, I decline to grant the recovery of the filing fee.

Conclusion

The Tenants' application is dismissed, in full, 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: January 27, 2020

Residential Tenancy Branch