Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: RR, OLC, MNR, MNDC, FF
For the landlords: MND, MNR, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied for:

- a reduction in monthly rent;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- compensation for the cost of emergency repairs;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlords applied for:

- compensation for alleged damage to the rental unit by the tenant;
- authority to apply the tenants' security deposit to any monetary award;
- a monetary order for unpaid rent; and
- recovery of the filing fee.

These matters convened by teleconference on March 27, 2020, and after a 60 minute hearing on preliminary matters and evidence issues, the hearing time expired. The matters were adjourned and both parties were advised they were expected to attend the reconvened hearing on the date and time in the Notice of Adjourned Hearing.

An Interim Decision was issued on March 27, 2020. At the original hearing, the evidence issues were discussed and as a result, the Interim Decision outlined orders for both parties.

As such, this Decision must be read in conjunction with my March 27, 2020, Interim Decision.

At the reconvened hearing on June 2, 2020, the tenants and the landlords attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the considerable amount of oral, written and digital evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenancy ended after the tenants filed their application on January 23, 2020. As a result, it was no longer necessary for me to consider the tenants' request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and a reduction in monthly rent. As these are issues directly related to an ongoing tenancy, I find it appropriate to exclude those requests and proceeded on the balance of the tenants' application for monetary compensation and the landlords' application for monetary compensation.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlords and recovery of the filing fee?

Are the landlords entitled to monetary compensation from the tenants and recovery of the filing fee?

Background and Evidence

The evidence showed this tenancy began on or about September 22, 2018, monthly rent was $2,000, and the tenants paid a security deposit of $1,000.

The tenancy ended on or about January 31, 2020.

The landlords have retained the tenants' security deposit.

Tenants' application –

The tenants' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Broken pool	$500
2. Broken furnace	$100
3. Plumbing repair	$100
4. Security deposit	$2,000
5. Move	$5,000
TOTAL	**$7,700**

In support of their claim, the tenants provided the following evidence.

Broken pool –

The tenant submitted their lease agreement included recreational facilities. The tenant said that they were deprived of the use of the Jacuzzi during the cooler/colder weather, and the landlords failed to account for the loss of use by offering a reduction in rent.

The tenants claimed they are entitled to $500, which is $100 per month for five months for the lack of this recreational facility. Filed into evidence was the written tenancy agreement.

Broken furnace –

The tenants submitted that when they moved into the rental unit in September, there was no heat or air conditioner, being without it for the first month. The tenants submitted that their rental unit was south facing, and they could not open the windows due to bugs.

The tenants submitted that it took a month to get someone into the rental unit who had the technological skills to repair the heating system. The builder finally gave them heaters.

The tenants submitted that they asked the landlords for compensation of $100 and he refused.

Plumbing –

The tenants submitted that the faucet started breaking off on the kitchen island and the landlord asked tenant, DO, to take care of the repair. The tenant said that they estimated how long the repair took and the trips to buy supplies in coming to the claim amount.

Security deposit –

The tenants claim they are entitled to double their security deposit of $1,000, as the landlords have not returned it, did not file their application within 15 days of receiving their forwarding address on January 27, 2020, and did not conduct an inspection of the rental unit.

Filed into evidence was a photo of the letter providing the forwarding address.

Move –

The tenants submitted that they were forced to vacate the rental unit when the landlords served them a One Month Notice to End Tenancy for Cause (Notice). The tenants submitted that they were wrongfully evicted, as the only reason the landlords evicted them was due to a complaint made.

The landlords served the tenants with the Notice on or about January 19, 2020, for an effective move-out date of February 29, 2020. A copy of the Notice was filed into evidence.

In response to my inquiry, the tenants said they did not file an application to dispute the Notice; instead, they packed up and moved out as quickly as they could. To support their claim, the tenants submitted they had to come up with $1,000 for moving expenses and $2,000 for a new place.

Landlords' response to the tenants' application –

In response to the tenants' application, the landlords provided the following evidence.

Broken pool –

The landlord submitted that the pool referred to by the tenants is not a Jacuzzi, it is a hot tub. The landlord said that the pool is only open on a seasonal basis; however, the tenants still had access to other amenities and facilities offered in the building, such as the gym.

The landlord submitted a copy of a letter from the strata president that said the pool was open for four weeks in September 2018, before it was closed for the season. The letter stated that the pool was reopened in May 2019, and remained open until October 2019.

Broken furnace –

The landlord said that the tenants were the first occupants of the rental unit, as it was in a brand new condominium building. The landlord said they allowed the tenants to move in early on September 22, 2018, rent free, although the tenancy did not begin officially until October 1, 2018.

The landlord submitted letters from the strata president and former strata vice-president who explained that the HVAC had been fully operational from the beginning of the occupancy in September 2018 to the present. The letter writers said that due to power outages beyond anyone's control, the heat pumps in each unit had to be re-set by turning the switch to off and then on again.

The landlord said that he received an email from tenant DO that the heat pump was working just fine.

The landlord submitted a statement from the customer care team for the strata, dated October 10, 2018, stating that a mechanical contractor was on site, knocked on the door to the rental unit, and received no response. The statement said the strata was not aware of any specific issues relating to the heat pump, but had been informed from the mechanical contractor they would contact the tenant directly to address the issues.

Plumbing –

The landlord said that a representative went to the rental unit to check on the plumbing, as the landlords did not live in the area at that time, and the tenant DO said the problem was resolved.

The landlord submitted that they were not made aware of an emergency repair and were not provided a receipt.

Security deposit –

The landlord said they provided notice to DO and agreed to do a walk-through; however no walk-through occured.

Move -

The landlords submitted that he gave the tenants a One Month Notice to End Tenancy for Cause due to the complaints made from other residents of the building, but the Notice gave the tenants until the end of February 2020 to vacate.

Landlords' application –

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Paint and supplies	$219.37
2. 2 sink drains	$34.94
3. Dryer repair	$120.75
4. Microwave carousel	$49.60
5. 2 oven racks	$165.49
6. Heat pump filter	$15.48

7. Tile replacements	$734.53
8. Cleaning quote	$360.00
9. Painting	$1012.50
10. Unpaid rent	$2000.00
TOTAL	**$4,712.66**

The landlords' original monetary claim was $3,418.91; however, the monetary order worksheet indicates an additional monetary claim. In response to my inquiry, the tenants acknowledged that they understood the landlords' claim to be that as listed above. The hearing proceeded on the amended claim, noted in the table.

In support of their claim, the landlords provided the following evidence.

Paint and supplies –

The landlords submitted that the photographs filed in evidence show that the tenants damaged the walls, which required repairing. The damage involved large holes, some where the television was attached to the wall.

2 sink drains –

The landlord said that after the tenancy ended, they noted that 2 sink drain covers were missing, and both had to be replaced. Filed into evidence is a receipt for the sink drain covers.

Dryer repair –

The landlord said after the tenancy, they turned on the washer/dryer and heard a banging sound, which turned out to be a dryer sheet, caught in the vent. The landlord said that the dryer manual instructed that these type of sheets were not to be used in the dryer.

Microwave carousel –

The landlord said that after the tenancy, they noticed the ring underneath the microwave carousel was missing, which means the microwave was inoperable. The ring had to be replaced.

2 oven racks –

The landlord submitted that the oven came with three interior racks, and at the end of the tenancy, there was only one rack, as this one was not removable. The landlords said they had to order replacements.

Heat pump filter –

The landlord said that the tenants never replaced the filter and basically no heat was able to pump through. The landlord said that the filter should be replaced every three months.

Tile replacements –

The landlords submitted that the tenant removed the shower curtain rod and installed a shower door. At the end of the tenancy, the tenant removed the shower door and put plugs over the holes where the door hung.

The landlords submitted that they were unable to find matches to the tile, and they will eventually have to replace all the tiles. The landlords said they were informed if the tiles were not replaced, mould would develop behind the tiles. The landlords provided a quote from a tile company for the expected replacement costs.

Cleaning quote –

The landlords stated that the tenants failed to properly clean the rental unit after they left, which left them to clean. The landlords confirmed that they cleaned the rental unit and the amount of the claim was from a quote from the cleaning company.

Painting –

The landlords said they had to re-paint the rental unit due to the damage caused by the tenants. They confirmed that the claim was the amount of a painting quote, as they performed the work themselves.

Unpaid rent –

The landlord said that on the Notice served to the tenants, the tenants were given until the end of February 2020, to vacate the rental unit; however, they left on or before January 31, 2020, and failed to pay the rent for February, which caused a loss of rent revenue.

The landlords also submitted that one of the holes that needed a repair was in the main door, but that they did not know how to account for that cost.

The landlords confirmed there was no move-in condition inspection report (CIR), as the rental unit was brand new and the tenants were the first occupants.

The landlords written evidence indicates that he asked tenant DO for an inspection at the end of the tenancy, but that eventually DO failed to do so.

Tenants' response to the landlords' application –

In response to the landlords' application, the tenants provided the following evidence.

Paint and supplies –

Tenant DO said he painted half of the rental unit prior to vacating and then left the paint for the landlords. DO said that landlord RN informed him the other landlord used the paint to finish painting the rental unit.

DO submitted he is a professional painter and that the holes used to hang the television were drywall screws.

2 sink drains –

The tenant said that she picked up a couple of dollar store drains as they were missing when the tenants moved in.

Dryer repair –

The tenant said that they never received a manual with instructions and that the banging noise began a few months before they vacated. The tenant said they did not know to refrain from using the dryer sheets.

The tenant submitted they did not make a complaint about the noise to the landlords as they were told not to complain to them.

Microwave carousel –

The tenant said she did not use the microwave and was not aware of the contents of the appliance.

2 oven racks –

The tenant said that she only ever uses one oven rack when she cooks, so she took out two of the racks and left them beside the refrigerator. The tenant referred to their photo.

Heat pump filter –

The tenant submitted that the new heat filter was still in the closet and only needed to be installed.

Tile replacements –

The tenant confirmed installing a glass shower door, but that he used professional tile plugs to fill the holes after it was removed.

Cleaning quote –

The tenants submitted they were working hard to pack up as soon as possible in order to move out, in compliance with the landlords' Notice.

The tenant said she may have missed a few spots of cleaning in the kitchen, but overall the rental unit was left clean. For instance, the sinks were spotless.

Painting –

DO said that he had painted at least half the rental unit and had already covered the nail holes. As a result, the landlords only had a small amount of painting left. DO said he is a master painter and said the landlords should have obtained three quotes.

As to the door, DO said all were wood and all the landlord had to do was use a foam roller, as it was an easy fix.

Unpaid rent –

The tenants asserted they vacated the rental unit because the landlords gave them a Notice to vacate, to which they complied by moving out as quickly as possible.

Landlords' rebuttal –

The landlords said that they did not see any paint left by the tenants and landlord GN said she does not know anything about the drywall screws.

The landlords said the sink drains were in the sinks at move in because every other condo unit had them. Additionally, the landlord submitted that the appliance manuals were left in the rental unit and that the microwave had been used, as there were splatters.

The landlords denied the oven racks were left in the rental unit and pointed to a specific photograph.

The landlords submitted that the tenants were not given permission to install a shower door and that the tile company said that the tiles had to be replaced to avoid mold in the future.

Landlord RN said DO told him they were not providing notice they were leaving, although he had given the tenants the option of staying until the end of February 2020.

Tenants' surrebuttal –

Tenant DO said he asked the landlord for a reference letter and informed RN that they were leaving at the end of the month, January.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords 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 tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlords did what was reasonable 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.

Broken pool –

I do not find the tenants support their claim that the pool was broken. I find the landlords submitted sufficient evidence from the strata president that the pool was offered to the residents of the building on a seasonal basis. As such, I do not find that the tenants were deprived of a facility at the hands of the landlords.

I dismiss the tenants' claim for loss of value of the tenancy for the pool.

Broken furnace –

The evidence shows that the residential property was a strata controlled building and that the units were becoming available during the time the tenants moved in.

The tenants were the first occupants in the rental unit. I find it reasonable that issues with the heating and air conditioner were still being addressed, as shown by the letter from the property manager, submitted by the landlords. The letter also shows that the property manager was addressing any issues by having a mechanical contractor assess the problems.

Residential Tenancy Branch (RTB) Policy Guideline provides that a temporary inconvenience does not rise to the level of receiving monetary compensation.

I therefore find the tenants submitted insufficient evidence to support their claim for the heat pump issue and I dismiss their monetary claim for $100.

Plumbing –

Having reviewed the tenants' evidence, I did not see proof that the tenants notified the landlords of emergency repairs or of the costs to repair the faucet.

I therefore dismiss the tenants' claim for plumbing repair.

Security deposit –

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord must either repay a tenant's security deposit or file an application for dispute resolution to retain the security deposit and pet damage deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

If a landlord fails to comply with the Act, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

In the case before me, the undisputed evidence shows that the tenancy ended on January 31, 2020, and that the landlords confirmed receiving the tenants' written forwarding address by email on January 27, 2020.

Due to the above, I find the landlords were obligated to repay the tenant's security deposit or make an application for dispute resolution claiming against the deposit by February 15, 2020, the 15th day after the end of the tenancy.

In this case, the evidence and records show the landlords filed their application on February 12, 2020, and met their requirement under the Act. I find under these circumstances the security deposit will not be doubled.

As to the security deposit itself, I will determine its disposition within this Decision.

Move -

In this case, although the tenants received a Notice to end the tenancy from the landlord, the tenants chose to move out, rather than file an application to dispute the Notice. I find these are choices the tenant made in ending a tenancy, on how to facilitate their moving. I find the tenants have failed to provide sufficient evidence to hold the landlords responsible for choices made by the tenant. Additionally, the tenants did not submit proof of costs, which is their obligation.

I therefore dismiss their claim for $5,000.

For the above reasons, as I have dismissed the tenants' entire monetary claim, I dismiss their application.

Landlords' application –

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

> **Leaving the rental unit at the end of a tenancy**
>
> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

First, in addressing the tenants' submission that the landlords extinguished their right to claim against the security deposit because there was no move-in condition inspection report (CIR), I agree, under section 24(2) of the Act. I, however, further find that the landlords are able to still seek compensation against the tenants pursuant to section 7(1) of the Act for claims for damage arising out of the tenancy.

Paint and supplies; 2 sink drains; Dryer repair; Microwave carousel; 2 oven racks; Heat pump filter; Cleaning quote; Painting –

Sections 23 and 35 of the Act set out the requirements of landlords and tenants concerning inspections of the rental unit at the beginning and end of the tenancy. The Act requires both parties to inspect the rental unit and complete an inspection report. This allows both parties the opportunity to comment on the condition of the rental unit, at the move-in and move-out.

In this case, while the landlords submitted that they spoke to the tenant about an inspection at the end of the tenancy, with no success, it is on the landlord to offer the tenant a first opportunity by proposing one or more dates, and if the tenant is not available, by providing a second opportunity for the inspection with a notice on the approved form. There is no evidence the landlords provided the tenants those opportunities in written form.

As to these claims, upon review of the landlords' evidence; in absence of a completed move-in or move-out condition inspection report form; and in the presence of the tenants' disputed oral, written, and photographic evidence; I find the landlords submitted insufficient evidence to prove the rental unit required painting to repair walls which went above reasonable wear and tear or that the rental unit was not left reasonably clean. Additionally, an inspection with the tenants at the end of the tenancy would more likely than not that show the sink drains, microwave carousel, and oven racks were there at the beginning of the tenancy and missing at the end of the tenancy, or that the dryer required repair, or that the filter required replacing.

Accordingly, these claims are dismissed, without leave to reapply.

Tile replacements –

I find there was no evidence submitted that the landlords consented to the tenants replacing the shower curtain rod with a glass shower door, only to have the tenants remove the shower door. In this case, I find the glass shower door became more of fixture in the rental unit, which the tenants then were not entitled to remove. They did, and in its place, they left holes in the tiles around the shower.

While the landlords have not yet incurred a cost to replace the tiles, I find it reasonable that they will have to at some future point, to avoid mould developing, due to the tenants' actions.

I find the quote submitted by the landlords to be a reasonable cost and find they have established a monetary claim of $734.53.

Unpaid rent –

The Act states that one way a tenancy ends is when a landlord serves a tenant with a notice to end the tenancy.

In this case, the landlords served the tenants a One Month Notice to End Tenancy for Cause on January 19, 2020, for a move-out date of February 29, 2020.

Instead of staying until the end of February 2020, the tenants moved out early, by January 31, 2020, without sufficient notice to the landlords, as the Notice did not take effect until February 29, 2020. As this was the case, the tenants were still required to give sufficient written notice to end the tenancy, or in this case, the tenants' notice was required to be served at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable.

In other words, in this case, if the tenants wanted to end the tenancy by moving out by January 31, 2020, the latest day the tenants could provide written notice to end the tenancy is December 31, 2019.

Due to the tenants' insufficient notice that they were ending the tenancy prior to February 29, 2020, I find the landlords have established a monetary claim of $2,000, for loss of rent for February 2020. I find it reasonable that the landlords would not likely have secured another tenant beginning February 1, 2020, due to the lack of written notice.

As the landlords were at least partially successful with their application, I award them recovery of their filing fee of $100.

For the above reasons, I find the landlords have established a total monetary claim of $2,834.53, comprised of tile damage of $734.53, loss of rent for February 2020 of $2,000, and the filing fee of $100.

Both applications-

The tenants' application has been dismissed.

The landlords' application has been partially successful as I have found they established a total monetary claim of $2,834.53.

Although the landlords extinguished their right to claim against the tenant's security deposit for damage, they have retained it.

In these circumstances, I find it appropriate to set-off the amount of the tenants' security deposit of $1,000 from the landlords' total monetary award of $2,834.53, and grant the landlords a monetary order for the balance due in the amount of $1,834.53.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed.

The landlord's application for monetary compensation is partially successful. The landlords were granted a monetary award of $2,834.53, directed to retain the tenants' security deposit $1,000 in partial satisfaction, and granted a monetary order in the amount of $1,834.53.

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: June 22, 2020

Residential Tenancy Branch