



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOLDEN GOALS SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNC, MNDCT, PSF, OLC, FFT and MNRL, FFL

### **Introduction**

On May 3, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”). The Landlord requested a Monetary Order to recover unpaid rent, and to be compensated for the cost of the filing fee. This matter was scheduled for a participatory hearing on September 1, 2020 at 1:30 p.m.

On July 28, 2020, the Tenants submitted an Application for Dispute Resolution under the Act to cancel a One Month Notice to End Tenancy for Cause, to request a Monetary Order for compensation, to request an order for the Landlord to provide services, to request an order for the Landlord to comply with the Act, and to be compensated for the cost of the filing fee. This matter was scheduled for a participatory hearing on September 1, 2020 at 9:30 a.m.

The two separate Applications were scheduled for two different hearings on the same day. After the Tenants’ hearing in the morning, the Landlord’s Application was crossed with the Tenants’ Application and both matters continued to be heard as a cross-application via conference call with the same Arbitrator.

The Landlord and Tenants attended both the morning and afternoon hearings and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### **Preliminary Matters**

The Tenants submitted five separate claims as part of their Application; however, as a result of the terminated tenancy, wished to withdraw their request to cancel a One Month Notice to End Tenancy for Cause, to request an order for the Landlord to provide services and, an order for the Landlord to comply with the Act. In accordance with Rule

2.3 in the *Residential Tenancy Branch – Rules of Procedure*, I dismiss these claims without leave to reapply.

### Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Should the Tenants receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence 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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on July 1, 2019 and ended on July 31, 2020. The rent was \$2,599.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,299.50.

The Tenants provided testimony and evidence to support their claims. The claims by the Tenants are as follows:

#### 1. Nuisance due to full replacement of roof

The Tenants submitted that one week into their tenancy, the Landlord began work on a major roof replacement. The Tenant stated that they were bothered by constant hammering, drilling, excessive noise and workers outside their windows and deck doors. The Tenants said that the nuisance was more challenging because one of the Tenants worked at home during the day and another worked late and was unable to sleep in the mornings. The Tenants claimed that the work occurred from 8:00 a.m. to 4 p.m., five to six days a week. They stated they were unable to open their windows during this time because of the noise and security issues. The Tenants are requesting compensation equal to two months of rent, \$5,198.00, for the six weeks (approximately) of construction during July and August 2019.

## 2. No decks

The Tenants stated that when they moved into the rental unit, there were two decks that were part of the rental unit. They acknowledged that they were aware that the decks were rotted and going to be removed but stated that the management of the building indicated that they would be replaced. Throughout their tenancy, the Tenants communicated to the management about the decks without a definite response.

The Tenants calculated that the decks made up 23% of the total square footage of the rental unit and are claiming 23% of the monthly rent for 11 months for a total of \$6,600.00.

## 3. No Heat

The Tenants testified that the rental unit did not have sufficient heat and that they had to supplement their heat with one portable heater. They complained to the Landlord as the heat was included with the rent. A repair would occur, the heat would work for a week, then stop working; however, this problem lasted for months. The Tenants are claiming compensation for their discomfort of living and working in a unit with insufficient heat.

The Tenants are claiming \$6,450.00 in compensation for 7 months of living with inadequate heat.

## 4. No skylight

The Tenants submitted that during the roof renovation, the skylight in the bathroom was damaged and began to leak. When they told the Landlord about the leaking skylight, the Landlord covered it and the skylight was never replaced. The Tenants state that the skylight was an important feature of their unit and they lost the enjoyment of it during their entire tenancy. The Tenants are claiming compensation in the amount of \$50.00 for eleven months, for a total of \$550.00.

## 5. Lack of Security and Privacy

The Tenants stated that there is a door from the common hallway that accesses the roof. From the roof, all of the Tenants' windows and doors are accessible. When people access the roof without notice, the Tenants felt a lack of privacy and security. The Tenants acknowledged that there were no incidents of theft that occurred during their tenancy.

The Tenants are claiming compensation in the amount of \$900.00 for eleven months, for a total of \$9,900.00.

## 6. Moving costs

The Tenants stated that if they were aware of the magnitude of roof repairs that were going to occur, they would not have moved into the rental unit. Their frustration with the Landlord about the above issues meant they had to leave the tenancy earlier than they would have liked. The Tenants provided an estimate of moving in/out costs for a total claim of \$2,400.00.

The Landlord responded to the Tenants' claims for compensation as follows:

### 1. Nuisance due to full replacement of roof

The Landlord testified that the Tenants were aware of the plan for the roof renovation and that the renovations had already started when the Tenants moved in. The Landlord brought in Witness N.M., (involved in the project and maintenance for the residential property) who stated that the replacement of the roof overlapped with the removal of the rotted decks. Although two different projects, the deck was removed as it covered part of the roof and the gravel had to be vacuumed before the actual replacement of the roof began. Both the Landlord and the Witness N.M. stated that the project for the roof lasted approximately 2 weeks.

### 2. No decks

The Landlord stated that the rental unit itself had been newly renovated and that new decks were not part of the rent. He stated the decks were in poor condition, the Tenants were aware that they would be removed, and there was no indication that new decks were going to be built. The Landlord submitted the move-in inspection report to demonstrate that there was no mention of the decks, their condition or of future replacement.

### 3. No Heat

The Landlord explained that the entire building is heated from a hot water/radiator heating system. When the Tenants complained of lack of heat in October 2019, he responded by sending Witness N.M. to check on the Tenants' system. Witness N.M. stated that there seemed to be an issue in the Tenants' rental unit in October 2019 and called in professional plumbers to check the system and to get the water circulating again.

The Landlord submitted plumbing invoices for October 25, 2019, November 2, 2019, November 30, 2019 and March 5, 2020 to support his testimony that he responded to the Tenants' concerns and attempted to address the issue. The Landlord also stated that the plumber found no issues with the heating system after October 2019.

#### 4. No skylight

The Landlord stated that the skylight began to leak during the roof replacement, and he covered it up to address the issue. He stated that there was no guarantee that there would be a skylight as part of the tenancy. The Landlord stated the skylight leaked and he repaired it by covering it up.

#### 5. Lack of Security and Privacy

The Landlord testified that the Tenants claim for lack of security is based on their misunderstanding that the key that was issued to the Tenants was the same key that was issued to all tenants. The Tenants were accidentally issued the master key instead of the laundry key. The master key could open the locked door to the roof and the Tenants thought all the tenants could do the same.

The Landlord submitted that the Tenants were on the top floor and that their rental unit was isolated. He said that only management had access to the roof. The Landlord acknowledged that there would sometimes be workers on the roof to deal with the renovation or fixing the skylight, but otherwise, there was no security or privacy issues relevant to the Tenants.

#### 6. Moving costs

The Landlord stated the Tenants were aware of the renovation when they moved in. The Tenants were aware of the conditions of the Tenancy Agreement and chose to move out on their own.

The Landlord submitted his own Application for Dispute Resolution requesting compensation for unpaid rent. The Landlord claimed that the Tenants owed him an outstanding amount of rent of \$5,616.00 for the period between April 1, 2020 and July 31, 2020. The Tenants agreed with the Landlord and confirmed that they owed the Landlord \$5,616.00 in outstanding rent up until July 31, 2020.

### Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or

their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As a result of both parties agreeing that the Tenants owe the Landlord \$5,616.00 in outstanding rent from the period between April 1, 2020 and July 31, 2020, I find that the Landlord has established a monetary claim in that amount.

1. Nuisance due to full replacement of roof

I accept the undisputed testimony of both parties that there was a significant renovation that involved the replacement of the roof. The Tenants claim that the renovation lasted for up to six weeks and the Landlord claims that the roof renovation took place over two weeks.

The Tenant provided pictures of their deck before removal and also during the roof renovation. The Landlord acknowledged that the deck and the roof were two separate projects and that the deck was removed prior to the roof being replaced. Regardless of the Tenants knowing about the renovation at the time of moving in, I find that the significance of the major renovations, both the removal of the deck and the replacement of the roof, would have interfered with the quiet enjoyment of the Tenants' rental unit.

The Tenants have claimed compensation in the amount of two months rent, even though they have indicated that the renovation lasted for six weeks. I find that the Tenants would have still been able to enjoy their rental unit during the evenings and weekends, been able to cook, sleep and make use of the amenities. After reviewing the testimony and evidence regarding the Tenants' claim for compensation for the renovations and because neither party could provide specific dates for the renovation, I find that the Tenants should be compensated for one-third of their rent for a period of one month. I find that the Tenants have established a claim for monetary compensation in the amount of \$858.00.

## 2. No decks

The Tenants provided testimony that they were shown a rental unit that included decks and stated that they had received verbal responses by representatives of the building management that the decks would be replaced. The Tenants provided correspondence with the Landlord requesting an answer about the decks and it appeared that the Landlord did not respond.

I find that the tenancy began with decks present and further, that there is value to having decks as part of a rental unit. Although it wasn't made clear in the Tenancy Agreement or on the condition inspection report that decks were included, it was also never made clear that the decks were not going to be rebuilt.

The Tenants submitted that the decks made-up 23% of the overall square footage of the rental unit and gave the same value to an open-air deck as a secured, contained and heated part of the rental unit. The Tenants calculated their loss for eleven months of their tenancy.

After reviewing the testimony and evidence from both parties, I find that it was reasonable that the Tenants should expect that the decks that they started their tenancy with would be rebuilt. I find that if it was clear from the beginning of the tenancy that the decks weren't going to be rebuilt, that the Tenants wouldn't have kept asking the Landlord about replacement. As a result, I award the Tenants compensation based on a portion of the rent, not a percentage of square footage, in the amount of \$200.00 for each of the eleven months that they claimed a loss, for a total amount of \$2,200.00.

## 3. No Heat

Based on the evidence provided, I find that the Landlord was diligent in responding to the Tenants' requests to address the inadequate heat in the rental unit. The Landlord demonstrated that both his own maintenance person and professional plumbers attended the residential property throughout the tenancy to service and install new parts to the heating system.

I find that the Tenants were responsible for mitigating their losses and could have invested in more heaters for the rental unit but admitted they did not want to and only used one, small portable heater. The Tenants provided photographic evidence that demonstrated that the heat in the rental unit was rarely under 15-16 degrees.

I find that the Tenants failed to provide sufficient evidence that the loss caused by inadequate heat stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the Landlord. Further, I find that the Tenants

have not provided evidence that can verify the actual monetary amount of the compensation claimed. As a result, I dismiss this part of the Tenants' claim.

#### 4. No skylight

I find, based on the undisputed evidence by both parties, that a skylight was a feature at the beginning of the tenancy and that the Landlord did not replace the skylight at any time during the tenancy. I find the Tenants' claim for compensation in the amount of \$50.00/month for eleven months is reasonable and award the Tenants \$550.00.

#### 5. Lack of Security and Privacy

The Tenants stated that their security and privacy was affected by the access to the roof that was provided to all of the tenants in the building. The Tenants acknowledged that they had originally thought all tenants in the building had keyed access to the roof but learned that they (the Tenants) had a master key that provided access to the roof and that no other tenants had this key. The Tenants confirmed that there were no incidents of breached security and that they did not see anyone on the roof other than management and workers.

I find that the Tenants failed to provide sufficient evidence of a loss and I dismiss this part of their claim.

#### 6. Moving costs

The Tenants have claimed \$2,400.00 in moving costs based on not knowing about the "magnitude" of the roof repair and their frustration with other management issues.

I have already awarded the Tenants compensation regarding their claim for losses caused by the renovation. I find that the choice to move in or move out of the rental unit was based on their own choice and not that of a breach of the Tenancy Agreement or Act by the Landlord. As a result, I dismiss this part of the Tenants' claim.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent and acknowledges the losses awarded to the Tenants. As the balance of the awards are in the Landlord's favour and the tenancy is over, I authorize the Landlord to retain the Tenants' security deposit:



Item	Amount
Outstanding rent owed to the Landlord for the period between April 1, 2020 and July 31, 2020	\$5,616.00
Nuisance due to full replacement of roof – Tenants' award	-858.00
No decks – Tenants' award	-2,200.00
No skylight – Tenants' award	-550.00
Less security deposit held by Landlord	-1,299.50
<b>Total Monetary Order for Landlord</b>	<b>\$708.50</b>

Both parties' applications had merit; and, because both parties paid filing fees, no awards will be granted.

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$708.50. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: September 02, 2020

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Residential Tenancy Branch