



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding
GUJRAL GROUP VENTURES INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended with the advocate HS ("the tenants"). The agent for the landlord DG attended with the lawyer OD ("the landlord"). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

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

Issue(s) to be Decided

Are the tenants entitled to the relief requested?

Background and Evidence

The parties submitted significant contradictory evidence. The hearing lasted 3.5 hours. While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlord and tenant agreed that this tenancy started on November 1, 2019, as a one-year fixed term tenancy. Rent was \$3,000.00 payable on the first day of each month and the tenant had paid a \$1,500.00 security deposit at the outset of this tenancy. A copy of the tenancy agreement was submitted into documentary evidence.

The parties also agreed that the tenants moved the last of their possessions out of the unit by April 17, 2020 and the tenants paid rent to that date.

This is the third RTB application between the parties, the previous Decisions having been referenced by the tenants in their written submissions.

The first hearing involved an application by the tenants to cancel a Notice to End Tenancy for Unpaid Rent issued by the landlord as they claimed they had paid the rent. The tenants withdrew the application at the hearing on April 28, 2020 as they vacated the unit on April 17, 2020. The file number is referenced on the first page.

The second hearing involved an application by the landlord for outstanding rent and utilities. The tenants disputed the claim saying they paid all rent and only one utility account was owing.

An Arbitrator submitted a Decision on June 10, 2020, to which reference is made on the first page. The Arbitrator dismissed the landlord's claims except for the outstanding utility bill which the tenants agreed to pay.

The Arbitrator in the June 10, 2020, referenced the "inconsistent, contradictory, and dubious nature of the Landlord's claims during the hearing". The Decision stated in part as follows:

Throughout these proceedings, I find that the Landlord repeatedly changed their testimony and made verbal amendments to their claim. Specifically, the Landlord provided conflicting testimony regarding what rent payments had been made and

for what months, repeatedly changed what months rent they were claiming for in unpaid rent, and which month's rent had been waved during this tenancy.

Also, I find that it was dubious of the Landlord to file a claim for unpaid rent for April 2020 when they knew that they had received that payment in full just 18 days prior to filing their application for these proceedings.

For the reasons stated above, I find that I am in doubt of the credibility of the Landlord's testimony on the whole and that this doubt has led me to question the validity of the Landlord's claims regarding unpaid rent for this tenancy. During these proceedings, the Tenants offered clear and concise testimony regarding the payment of their rent for January, February, March and April 2020.

However, I find that the Landlord amended their claim and changed their testimony whenever they were presented with evidence that refuted their claim in this proceeding. I find it disturbing that an applicant would repeatedly change their testimony and amended their claims to suit the testimony and evidence provided by the respondents during a hearing.

Overall, I find it difficult to reconcile the inconsistent, contradictory, and dubious nature of the Landlord's claims and testimony, which has caused me to doubt their credibility on the whole. When I combine the inconsistent, and contradictory testimony provided by the Landlord during these proceedings, with the documentary evidence that I have before me, I find that, on a balance of probabilities, the Landlord has not provided sufficient or compelling evidence to persuade me that there is any amount of rent outstanding for this tenancy.

Based on the pattern of behaviour and actions of the Landlord during these proceedings, I find it more likely than not that the rent has been paid in full for this tenancy.

In this hearing, the tenants' claims fall under three main headings:

1. The tenants request reimbursement of 4.5 months of rent they paid to the landlord, claiming that the landlord knew when he rented the house to them that

it had no power, no heat, no hot water, and contained black mold which was a hidden health and safety issue;

2. The tenants request reimbursement of expenses agreed to by the landlord or properly his responsibly and never paid in the amount of **\$3,856.53**;
3. The tenants request reimbursement of their cost of moving in the amount of **\$1,509.03**.

The tenants called the electrician SP who provided affirmed testimony.

The tenants' submitted written submissions with attached photographs and receipts in support of their testimony. The considerable evidence is briefly summarized under each of the three claims as follows.

First of three claims:

The tenants request reimbursement of 4.5 months of rent they paid to the landlord, claiming that the landlord knew when he rented the house to them that it had no power, no heat, no hot water, and contained black mold which was a hidden health and safety issue

:

1. On October 15, 2019, the tenants received the keys to the house and property from the landlord with an occupancy date of November 1, 2019; a tenancy agreement was signed on October 20, 2020;
2. The tenants had a newborn baby; they knew there was no power to the house when they rented but the landlord assured them the power would be on by the time they moved in; they would not have moved in otherwise;
3. There was no condition inspection on moving in or moving out;
4. When the tenants moved in on November 1, 2020, the power was not on;
5. The landlord agreed to hire and compensate the electrician SP who was called as a witness and confirmed the arrangement; SP also confirmed the work done on the electrical system;
6. The witness SP stated that the unit required significant electrical work and was not ready for occupancy for almost one month; SP stated he found unauthorized buried power lines, and discovered that the meter had been removed and sealed by the power company; he testified that the company had cut the power lines because of suspected theft of power;
7. SP testified that the unit's safety measures, such as detectors, were not working and no applications had been made for the required permits;
8. In a letter from SP, a copy of which was submitted as evidence, SP confirmed the tenants' testimony about the state of the electrical system, described the

- electrical work he did, and claimed there were many deficiencies such as no ventilation for the gas stove in the kitchen and a bathroom fan improperly installed in the kitchen ceiling; as well, the gas range was not up to code;
9. On November 20, 2020, the power was turned on;
 10. The heating system then required repairs and the unit was heated for the first time on November 25, 2020;
 11. The witness SP submitted an invoice to the landlord which was not been paid and has been secured by a lien on the property;
 12. The parties complained to DH or his wife many times about conditions in the unit;
 13. The landlord agreed the tenants not have to pay rent for the month of December 2019 as compensation;
 14. The house had many ongoing, inconvenient deficiencies such as water running out of the kitchen vent fan when it rained and problems with the washer/dryer;
 15. The tenants stated that the oven and the dryer in the unit never worked;
 16. The landlord was informed verbally and by text of the deficiencies; the landlord did not carry out any repairs despite repeated requests;
 17. In early December 2019, the tenants noticed there was a black substance (referred to by the tenants and in this Decision as “mold”) growing in the closet in the third bedroom;
 18. Between December 15 and 20, 2019, the tenants cut a 6-inch by 6-inch hole in the drywall in the closet and found thick black mold covering the backside of an 8-foot section of drywall;
 19. The tenants’ written submissions stated, “the mold went from the concrete floor in the closet, up 3 feet on the backside of the drywall”;
 20. Black mold started showing up on the ceiling in the laundry room, the garage and the kitchen; the mold was coming through the paint;
 21. The photographs submitted by the tenants show a black substance forming spots, smears or blemishes of varying sizes on several surfaces;
 22. The tenants believed the unit had been painted before they moved in to cover the mold, which eventually made its way to the wall surfaces;
 23. They attempted to clean the mold, but it would reappear in a few days; cleaning had no lasting effect;
 24. The tenants experienced poor health and headaches, as did some of their guests;
 25. The tenants grew increasingly concerned about the mold and asked the landlord to investigate;
 26. The landlord came to the unit but did not correct the problem;

27. The tenants wanted to move but had spent all their savings on repairs to the unit for which the landlord failed to reimburse them; they lacked the financial resources to move;
28. At the behest of the landlord, an agent for a restoration company visited the property on March 20, 2020 and took air and substance samples;
29. During the visit, the agent verbally recommended the tenants immediately vacate the unit because of the air quality which he considered unsafe;
30. The mold has not been analyzed and the tenants are waiting for a comprehensive report which has been delayed because of the pandemic;
31. An email from the agent for the restoration company, a copy of which was submitted as evidence, stated as follows:

My recommendation to leave the property was based on the fact I started to get a headache with in a few minutes of entering your home and with a small baby I did not feel the indoor air quality to be safe for occupancy.

32. The tenants immediately vacated and did not spend another night in the unit; they removed all their possessions by April 14, 2020, to which date they paid pro rated rent;
33. The male tenant, who was staying in a camper on the property, described an unsettling and unexpected visit to the unit on April 4, 2020; two men wearing "masks and hoodies" came and claimed to be sent by the landlord; they demanded the tenants pay rent or the family would be harmed;
34. The tenants received a phone call on April 13, 2020; the caller demanded \$6,000.00 "or you are dead" and not to run as he, the caller, "knows where your family is";
35. The tenants stated they were afraid, reported the matter to their advocate, but did not call the police in fear of retaliation;
36. The landlord sent the agent CJ to the tenants to also demand payment of rent;
37. CJ told the tenants it will "be bad for your family if you don't pay"; CJ demanded the tenants move construction debris (for which they were not responsible) from the property; the tenants were frightened and feared for their safety; they complied to the demand incurring \$1,260.00 in removal fees for which they seek reimbursement;
38. The tenants believed CJ and the men sent earlier were "gangsters, violent men, who hurt people";
39. The rental experience was traumatic; "we have not recovered";
40. Three weeks after the tenants vacated, the unit was destroyed by fire.

Second of Three Claims

The tenants request reimbursement of expenses agreed to by the landlord or properly his responsibly and never paid in the amount of \$3,856.53;

The tenants' evidence under this heading is summarized as follows:

1. From the beginning of the relationship, the parties verbally agreed that the landlord would reimburse the tenants for certain expenses; sometimes DH's wife authorized the purchases as she was the owner of the company;
2. Before the tenants moved in, the parties agreed the tenants would put new locks on all doors as the previous tenants may still have keys; this is one of the several expenses for which the tenants claimed reimbursement based on verbal agreements with the landlord, represented by DH or his wife;
3. The following items were purchased: deadbolts, brushes, a closet rod, and brackets;
4. The tenants rented a generator during the time they had no power and the landlord agreed to compensate them for the expense and for gas to operate it;
5. The tenants often tried to contact the landlord to get refunded and were told he was out of the country and would pay them back when he returned;
6. The tenants repeatedly asked for reimbursement, the landlord continually promised repayment, and no refund was made;
7. The house had undergone some renovations; the parties verbally agreed the tenants would complete some of the work with the landlord reimbursing cash expense;

The tenants submitted testimony and evidence during the hearing and clarified their claimed expenses. They claimed the following for locks, repairs, generator rental and paint, as follows (collectively referred to as "repair and other expenses"):

ITEM	AMOUNT
Deadbolts	\$265.92
Duct Repair	\$28.73
Repairs	\$52.66
Paint	\$39.41

Repairs	\$161.24
Repairs	\$86.69
Total– Repairs and Other Expenses	\$634.65

The tenants also claimed compensation for gas, generator rental when they did not have power, and removal of the landlord's debris for which they claimed they were forced to pay.

The entirety of the claims, including Repairs and Other Expenses (above), is summarized in the following table:

ITEM	AMOUNT
Gas (itemized in tenants' submissions)	\$542.36
Generator rental	\$1,419.52
Removal of debris	\$1,260.00
Repairs and other expenses (itemized in tenants' submissions and set out in table above)	\$634.65
TOTAL EXPENSES CLAIMED BY TENANTS	\$3,856.53

The tenant submitted copies of receipts and bank statements in support of their claims for reimbursement of expenses.

Third of three claims: The tenants request reimbursement of their cost of moving in the amount of \$1,509.03.

Landlord's Reply

The landlord denied the tenants are entitled to a refund of the 4.5 months rent or reimbursement for the expenses.

The landlord submitted testimony denying all key aspects of the tenants' evidence. The submissions are summarized as follows:

1. The landlord carried out responsible repairs to the unit prior to the tenant moving in; there were no substantial defects as the tenants claimed;

2. The landlord acknowledged that some electrical services were necessary to get power to the house, but stated he had hired the electrician JS and denied that he hired the electrician SP or ever agreed that SP would do the work;
3. The landlord did not agree to pay SP who was a friend of the tenants and received instructions from them as they wanted changes to the electrical;
4. The landlord hired contractors to remove all construction debris from the property; confirming invoices were submitted;
5. There was no remaining debris at the end of the tenancy and any cost incurred by the tenants was for removal of the tenants' belongings;
6. The unit and property were in good condition in all respects when the tenants moved in; witness statements were submitted in support of this assertion;
7. There was no mold in the house and the black substance viewed in the photographs submitted by the tenants, the presence of which was denied, is not harmful even if it were present; it is not "toxic black mold";
8. The landlord compensated the tenants by providing them with free rent for the month of December 2019 and he does not owe them any further compensation;
9. The compensation excluded the generator rental and gas, the landlord never agreed to reimburse the tenants for this expense or any other, and the tenants are not entitled to compensation;
10. The landlord did not agree to reimburse the tenants for any of the expenses claimed and was not notified of the expenses which were incurred without approval;
11. The men demanding money in April 2020 were not retained or authorized by the landlord who has no knowledge of the event;
12. CJ, while retained by the landlord as an agent, was not authorized to threaten the tenants; the landlord is not responsible for what CJ did or said that may have frightened the tenants;
13. The landlord was never informed about the mold, did not have an opportunity to inspect or remediate, and the tenants vacated without giving him this opportunity;
14. The landlord did not have the mold tested;
15. The tenants' claims are false and should be dismissed.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments during a lengthy hearing are reproduced here. The relevant and important aspects of the claims and my findings are

set out below. I have considered the considerable testimony and documentary evidence. As noted, the parties have contrasting narratives.

In this case, the tenants alleged that their right to quiet enjoyment was negatively affected as a result of defects in the building including the presence of mold and seek monetary compensation equivalent to 100% rent reduction for the devaluation of the tenancy as well as compensation for expenses.

The landlord has an obligation to repair and maintain the rental property pursuant to section 32 of the Act Which provides in part as follows:

Landlord and tenant obligations to repair and maintain

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 67 authorizes the determination of the damage or loss and states:

Director's orders: compensation for damage or loss

67 *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

The claimant bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities **all** of the following four points:

1. The existence of the damage or loss;

2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

Credibility and Weight of Evidence

I found the tenant's evidence forthright, credible and articulate. I find I concur in all key respects with the tenants' recounting of what took place and their assessment. I give considerable weight to their testimony which was supported by the documentary evidence. The tenants clearly and articulately described the negative impact on living in the unit with a newborn in the situation as they described, which I accept. I find the landlord was aware of the disturbances through multiple verbal complaints but failed to take reasonable steps to correct the situation or to adequately compensate the tenants. I accept the tenants' testimony describing their subjective experience of distress, frustration and fear for their physical safety when threatened by people whom I find are more likely than not to have been authorized agents of the landlord.

In listening to the testimony and reviewing the documentary evidence including correspondence between the parties, I accept the tenant's testimony that the landlord was consulted each time about the expenses and agreed to the tenants incurring the costs while promising to reimburse them.

I found that I was less convinced by the landlord's testimony. I found the blanket denial of all the tenants' claims to be unlikely, unsubstantiated and evasive.

Where the version of events differ between the parties, I prefer the tenants' version as being the most likely and credible.

Burden of Proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenants' claim for damages is akin to a claim for loss of quiet enjoyment for which they request a return of the 4.5 months rent they paid in the amount of \$13,500.00.

The tenants' also claim for compensation for expenses as categorized earlier. Each claim will be addressed in turn.

Loss of Quiet Enjoyment

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

22. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

*(b) **freedom from unreasonable disturbance;***

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

[emphasis added]

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

The Guideline states in part as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

[emphasis added]

Considering the testimony and evidence, based on the Act, and pursuant to Policy Guideline 6, I find that the tenants have met the burden of proof on a balance of probabilities that the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently in protecting the tenants' right to quiet enjoyment.

I find the landlord knew at the beginning of the tenancy that the house had significant deficiencies as the tenants learned during the occupancy. I find the landlord repeatedly promised to do repairs and expenses and to reimburse the tenants for their outlays but never did so in violation of his promises.

I accept the tenants' evidence that the interference with their quiet enjoyment was substantial as well as frequent and ongoing for the duration of the tenancy. I accept their testimony that for the first month of the tenancy, they had no electricity or heat. I accept their statements that the oven and washer/dryer did not work reliably or at all during the tenancy.

As supported by the photographs, I accept the tenants' evidence that they observed a black substance growing on the walls (referred to as "mold"). I accept their assertions that they were alarmed, worried about their and their baby's health and find these fears to have been reasonable in the circumstances. I find the landlord was informed of all these events, promised to deal with the issues "later", and never did so.

I also find that the people who demanded money from the tenants were more likely than not retained by the landlord. I accept the tenants' testimony there were afraid for their physical safety. I find the landlord's actions in their totality to be a serious dereliction of his duty.

The landlord has acknowledged that CJ was his agent, who also threatened the tenants and demanded they pay for the cost of removing the landlord's debris. I find the landlord engaged through his agents in bullying, threatening behaviour that terrorized the tenants.

I acknowledge that the landlord provided one free month's rent but find this was inadequate compensation for the loss of quiet enjoyment and expenses.

I find the landlord was aware of unreasonable disturbances through the various malfunctions and mold in the unit through multiple complaints from the tenants but failed to take reasonable steps to correct the situation or to compensate the tenants. I find the landlord did not meet their obligations under the Act.

I accept the tenant's testimony supported by documentary evidence that the situation was serious and had a profound effect on their ability to live peacefully in the unit. I find that the tenants were significantly and increasingly unable to use the unit as expected.

I find the loss of quiet enjoyment extended for a period of 5.5 months as claimed by the tenants. I find the tenants lost certainty about whether they could safely live in the house. I find that the tenants' response to the advice to vacate the unit immediately as the air was unsafe was reasonable and understandable in the circumstances. I find the tenants experienced discomfort, fear, uncertainty and distress about the events they described evenly over this period. I accordingly find the period of loss of quiet enjoyment extended for 5.5 months.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find the tenants were able to live in the unit during this 5.5-month period but significantly deprived of their right to live peacefully by the landlord's failure to act or to respond adequately. I find that, while the source and extent of the disturbances varied from time to time, the tenant was consistently denied full quiet enjoyment for this period.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenants have met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for 4.5 months, having received one free month's rent of the total tenancy of 5.5 months.

In view of the circumstances and the payment of rent of \$13,500.00, I find it is reasonable that the tenants receive compensation in the amount of 50% of the rent paid for the 4.5-month period which I find is \$6,750.00.

I find the landlord coerced the tenants into paying for debris removal which was properly his responsibility. I find the tenants have met the burden of proof on a balance of probabilities that they did not willingly agree to pay for this service, that they were frightened and intimidated into doing so, that they incurred the expense claimed, and did what they could to reduce the expense. I accept the male tenant's testimony as accurate that he worked for several hours without pay to collect the debris and assist in its removal from the site.

I find the tenants have not met the burden of proof with respect to the moving expenses and find that the landlord is not required to reimburse the tenants for this aspect of their claim.

With respect to the remainder of the tenants' claimed expenses, I find the landlord has met the burden of proof on a balance of probabilities with respect to all claimed expenses. I find the landlord agreed to each out-of-pocket expense, he promised to reimburse the tenants, the tenants incurred the expenses, that they are reasonable, and the tenants took all reasonable steps to reduce the expenses.

The tenant is also entitled to reimbursement of the filing fee of \$100.00.

In summary, I award the tenants a Monetary Order calculated as follows:

ITEM	AMOUNT
Loss of quiet enjoyment	\$6,750.00
Compensation for expenses	\$3,856.53
Reimbursement of filing fee	\$100.00
TOTAL MONETARY ORDER	\$10,706.53

Conclusion

I grant a Monetary Order to the tenants in the amount of **\$10,706.53**. This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

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: November 28, 2020

Residential Tenancy Branch