



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Summit circle development corp and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      OLC, FFT

### **Introduction**

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord's agent (hereafter referred to as the landlord) called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties have provided evidentiary material, however during the course of the hearing I determined that the landlord's evidence was filed with the Residential Tenancy Branch later than the time prescribed in the Rules of Procedure and was not provided to the tenants. I advised the parties that that evidence will not be considered. No issues with respect to service or delivery of evidence by the tenants were raised, all of which has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically:
  - to end the fixed term early;
  - to return the security deposit and pet damage deposit to the tenants;
  - make repairs to the rental unit or property?

## Background and Evidence

**The first tenant** (JE) testified that this fixed term tenancy began on January 1, 2021 and reverts to a month-to-month tenancy after January 1, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$2,000.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. Prior to the start of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,000.00 as well as a pet damage deposit in the amount of \$1,000.00, both of which are still held in trust by the landlord. A copy of the tenancy agreement has not been provided for this hearing. The rental unit is a townhouse.

The tenants want to move out and recover the pet damage deposit and security deposit.

The tenants have provided a copy of the advertisement to rent the rental unit, and the tenant testified that they viewed a showroom, and were supposed to move into unit 21 but were provided with a different unit instead, unit 27. The advertisement states: "Renovated w condo finishes," and includes washer, dryer, fridge, stove, dishwasher and parking, with a balcony off the master bedroom.

The landlord told the tenant the day before moving in that he needed the originally promised unit for employees. No move-in condition inspection report was completed. The tenancy agreement was signed 2 weeks before the move-in date, and the landlord changed the unit number on the tenancy agreement.

Prior to moving any furniture into the rental unit, the tenant called the landlord right away stating that the rental unit was not acceptable. It was filthy and the back yard contained garbage and metal and was uneven. The rental unit was not renovated at all. The landlord arrived yelling that the tenant was being unreasonable and said that the rental unit had been professionally cleaned.

The fridge wasn't working and the tenants had to wait for almost 2 months for a washer. The tenant offered to purchase a washer and reduce rent for the cost but the landlord disagreed. Further, the vent in the upstairs bathroom doesn't work. The landlord took it out and cleaned it and put it back, but still doesn't work. Two burners on the stove don't work, and the landlord promised to replace the windows upstairs and sills in the 2 kids' bedrooms, but that still hasn't been done; they are moldy and rotted.

**The second tenant** (PH) testified that the window sills in the kids' bedrooms were never fixed and the tenants' kids haven't been sleeping in there. They sleep in the tenants' bedroom. The windows in the kids' rooms are moldy around the bottom and disgusting.

The tenants sent a text message to the landlord when they first moved in asking that they get fixed and the landlord replied he would have to wait until the windows were replaced in summer 2021. That never happened.

The rental unit has not been renovated at all except for new carpet, but that's all. Some spots were painted but some weren't painted. The walls on the stairs have not been painted at all and some of the downstairs walls were painted leaving marks on some hardware including door knobs and light switches and electrical outlets, as well as some on the floor. Photographs have been provided for this hearing.

The tenant further testified that 1 panel on the stove doesn't work at all, and one burner won't turn on except on low. The landlord hasn't been advised of it because it took 2 months for the landlord to get a new washer; the one in the rental unit at the beginning of the tenancy wouldn't drain at all. When the tenant told the landlord about it, the landlord said it was on back-order and wouldn't allow the tenants to get one.

The landlord hasn't helped with anything. The tenants were promised a renovated suite and the landlord said it would be better than the showroom that the tenants viewed, but it wasn't and has been very upsetting for the family.

The tenants want to move out. If the landlord had done the renovations, the tenants would be happy to stay but they didn't get that. The advertisement said a fully renovated with condo finishes, but that's not what the tenants received.

The tenant also testified that the front window had a crack at the beginning of the tenancy, but a weed-wacker cracked it more, so the tenants taped it to prevent harming the kids. The tenants were told that all old single pane windows would be replaced. No walk-through was done and nothing to that effect was signed.

The landlord paid the tenants for cleaning up the yard.

**The landlord** testified that he cannot wrap his head around the photographs and documents provided by the tenants and claims they are not relevant. The property that the tenants received was immaculate with brand new carpets installed a few days prior to moving in. It was also professionally painted, a new floor in the laundry room, and new light fixtures. The exterior was also painted. In short, it was in exceptional condition.

The tenant complained when the landlord arrived, up in arms, and the landlord was shocked so he took a video, which was a stark contradiction of what the tenant was saying.

The fan in the bathroom was professionally fixed and installed by a licensed electrician a couple of days prior to the tenancy, so sometime in December, 2020. The landlord followed up with the tenants' complaints and an electrician went back to the rental unit in January, 2021 and repaired it. It was removed, new parts and motor purchased, repaired and re-installed. Due to its size, the landlord cannot purchase a new one and it needed to be rebuilt. It was working well and the landlord has not heard of any complaints from the tenant; this is new to the landlord.

The landlord has not heard of any new complaints about the windows and needs to inspect it. The landlord fixed the sills himself and the tenant said he didn't like it, but the landlord was not aware that it was still an issue.

The landlord has not previously heard about the stove not functioning.

The landlord has always responded and dispatched contractors and has spent thousands of dollars.

**The landlord's witness** is a property manager and has been since June this year.

The witness lived on the rental property for 3 years and was a tenant of a previous landlord, prior to this landlord purchasing it.

The witness drove by the rental unit and noticed cardboard taped to the bottom window of the rental unit beside the door, with a hedge directly in front of it. It was not broken before and the witness sent a text message to the current landlord asking if he knew about it.

#### SUBMISSIONS OF THE LANDLORD:

The unit was acceptable with new paint and floors and when issues arose the landlord placed orders with manufacturers in March and February. Stores have show room pieces only, and the landlord has only heard of issues with these tenants out of 29 apartments, and the landlord has spent thousands of dollars.

When the tenant came to see the rental unit, they looked at it, and the unit they would rent would be based on which unit would be completed. The tenants said that as long as it was on the 1<sup>st</sup> floor they'd be happy. No specific unit was promised.

A couple of days after the landlord met the tenants, and before the tenancy agreement was signed, the unit that was originally placed on the tenancy agreement was behind schedule for instruction. The unit that the tenants moved into was renovated at the same time, but the other unit needed more work. It was not withheld for employees.

#### SUBMISSIONS OF THE TENANTS:

The landlord told the tenants to find a used washer on Facebook Marketplace.

#### Analysis

Firstly, the *Residential Tenancy Act* specifies how a tenancy ends:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

The tenants have applied under Section 44(1)(f) and none of the other paragraphs apply to this tenancy.

I refer also to Residential Tenancy Policy Guideline #30 – Fixed Term Tenancies, which states, in part:

“Neither party may end a fixed term tenancy early, except under the circumstances described in section C of this guideline.

“C. ENDING A FIXED TERM TENANCY

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care).

“A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

“A tenant may not use the one month notice provisions of the Legislation to end the tenancy prior to the end of the fixed term except for breach of a material term by the landlord or under section F below (Early Termination for Family or Household Violence or Long-Term Care). Any other one month notice will take effect not sooner than the end of the fixed term.

“A tenant who wants to end the tenancy at the end of the fixed term, must give one month’s written notice. For example, if the fixed term expires on June 30th, the tenant must ensure the landlord receives the tenant’s notice to end the tenancy by May 31<sup>st</sup>.”

In this case, the tenants have not given a notice to end the tenancy to the landlord. Therefore, I cannot order that the tenancy is ending.

With respect to the security deposit and pet damage deposit, a landlord must return the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant’s forwarding address in writing, or must make an application claiming against the deposit(s) within that 15 day period. If the landlord fails to do

either, the landlord must repay double the amount. If a landlord fails to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations, the landlord's right to claim against the deposit(s) for damages is extinguished, meaning that the landlord can make a claim for damages if any exist at the end of the tenancy, but must still return the deposit(s) within that 15 day period. Further, if the tenant does not provide a forwarding address in writing within a year after the tenancy ends, the landlord may keep the deposit(s).

In this case, the tenancy has not ended and the landlord has not received a forwarding address in writing, and therefore, I cannot order that the landlord return the deposits to the tenants.

With respect to repairs, I have reviewed all of the evidentiary material of the tenants, however in order to make an order for repairs, the tenants must notify the landlord that repairs are required. In this case, I accept the undisputed testimony of the landlord that he was not notified that the stove isn't fully functioning and did not know that the bathroom fan has not been working.

With respect to windows and sills, the second tenant testified that they were never fixed, are moldy and disgusting, and after asking for them to be repaired the landlord replied that it would have to wait until windows are replaced in the summer of 2021.

I have reviewed all of the evidentiary material, most of which I found to be irrelevant to this application. The landlord testified that the rental unit was professionally painted, and judging from the tenants' photographs, it was painted, but certainly not professionally in any of the tenants' photographs. The window sills contain black marks, which can usually be rectified with some bleach and water, however it also appears that the mold in the sills has seeped through the paint, and the frames are splattered with white paint. Condensation from the single pane windows is also evident in the photographs. The landlord testified that he fixed the sills himself and the tenant said he didn't like it. He also testified that he was not aware that it was still an issue, and needs to inspect.

I accept the undisputed testimony of both tenants that the landlord promised to replace the single pane windows in the summer of 2021, and judging from the photographs, I am not satisfied that the landlord has provided or maintained them in a state of decoration and repair that makes the rental unit entirely suitable for occupation by a tenant.

I order the landlord to replace the single pane windows, and repair the sills in a state that prevents mold and mildew and condensation from seeping into the sills and windows by November 15, 2021.

Since the tenants have been partially successful, the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing the order as a judgment in the Provincial Court of British Columbia, Small Claims division for enforcement.

### Conclusion

For the reasons set out above, I hereby order the landlord to replace the single pane windows and repair the sills in the bedrooms in a manner that prevents mold and mildew and condensation from seeping into the sills and windows by November 15, 2021.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: October 28, 2021

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Residential Tenancy Branch