



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, OLC, FFT

Introduction

This hearing was scheduled to convene at 9:30 a.m. on January 18, 2022 by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both tenants attended the hearing and one gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlords joined the call.

The tenants had applied for and received an order for substitutional service on November 19, 2021 permitting the tenants to serve the landlords by email. The tenant advised that the order was received by the tenants on November 22, 2021, and the tenants were permitted to provide proof of compliance with the substitutional service order during this hearing. The tenants have uploaded screen shots of the emails to each of the landlords with all attachments, including the evidentiary material of the tenants. I am satisfied that the landlords have been served in accordance with the substitutional service order.

All evidence of the tenants has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant advised that the tenants have vacated the rental unit, and therefore, I dismiss the tenants' applications for an order reducing rent

for repairs, services or facilities agreed upon but not provided and for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for painting the rental unit and moving expenses?

Background and Evidence

The tenant testified that this tenancy began as a fixed term tenancy for 1 year commencing on September 1, 2021. Rent in the amount of \$2,000.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the upper level of a house that also contained a rented basement suite and the landlords did not reside on the property. The tenants vacated the rental unit on December 1, 2021 with notice to the landlords.

The landlords do not live in the Province of British Columbia and the parties communicated by email. The landlords failed to sign the tenancy agreement and handed the tenancy over to a property manager, who advised the tenants that since the landlords didn't sign the tenancy agreement, the tenancy was on a month-to-month basis. However, the landlords failed to communicate or cooperate with the property management company, and the property management company ceased acting for the landlords.

The tenant further testified that when the tenants moved into the rental unit there were holes throughout the entire upper level. The bedrooms were filthy, walls were filthy and had been smoked in. Numerous photographs have been provided for this hearing. The landlords agreed that the tenants could paint, then refused to pay for it. Copies of emails have been provided as evidence for this hearing wherein the tenant explained they had no place to go and could paint, and asks for a discount on the rent. The landlord's response is, "If that makes you happy yes." The tenants claim \$469.82 for paint and supplies and \$500.00 for labor involved with mudding, repairs to walls, sanding, priming and painting 2 upper floor bedrooms, the recreation room and

stairway, which was 1 ½ weeks of work. Receipts for the paint and supplies have been provided for this hearing. The tenants had obtained a quote from a painter who estimated a cost of \$2,000.00 for labor in addition to paint and materials.

Also, during the tenancy the landlords indicated that they were going to sell the property, then refused to communicate. The landlords also called police claiming that the tenants threatened to burn the house down, which was not true; the tenant had asked the landlords about the operation of the fire detectors.

Whenever the tenants asked for repairs to be completed, the landlords denied the requests. The tenants felt harassed and stressed and felt they had to move out. The tenants also claim the cost of \$200.00 for a U-Haul and testified that it was difficult to pay another security deposit for another rental unit.

The tenant also testified that the landlord has not returned the security deposit to the tenants, and the tenants did not agree that the landlord keep any of it.

Analysis

Where a party makes a claim for damage or loss, the claiming party must satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material, and since the landlords have not signed the tenancy agreement, the standard terms apply and the tenancy is a month-to-month tenancy. However, the law requires a landlord to put any tenancy agreement in writing.

The tenants claim costs for painting the rental unit. A landlord is required by law to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant.

The *Residential Tenancy Act* specifies that a tenant may make emergency repairs and claim such costs from the landlord. However, there are rules about that, and I do not believe that painting a rental unit constitutes an emergency repair. Therefore, in order to be successful in obtaining monetary compensation for painting, the tenants must

establish that the landlords agreed in writing to reimburse the tenants for their time and expense.

I have also reviewed the text messages provided by the tenants, and I accept the undisputed testimony of the tenant that the landlords agreed to reimburse the tenants for painting. Considering the photographs provided by the tenants, I am satisfied that the landlord has not complied with the *Act* by providing a rental unit in a state of decoration and repair that complies with the *Act*. Therefore, I find that the tenants have established elements 1 and 2 in the test for damages.

The tenants have provided proof of out-of-pocket expenses of \$219.43 and \$250.39, and have therefore satisfied element 3 in the test for damages for the cost of paint and supplies.

The tenant testified that about 1 ½ weeks of work was completed mudding, sanding, repairing, priming and painting, and that a quote from a painter was over \$2,000.00 for labor in addition to materials. I also accept the testimony that the rooms painted were 2 bedrooms, a recreation room and stairway. The tenants claim \$500.00 for their time and effort, and I find the claim to be reasonable.

The tenants also claim \$200.00 for a U-Haul, stating that the landlords caused the tenants to move out by saying they were going to sell, refusing to communicate with the tenants and refusing to make repairs. The text messages make it clear that the landlords did not want to deal with the tenancy and did not or refused to comply with the law making it difficult for the tenants to continue the tenancy. I find that the tenants are entitled to the cost of a U-Haul.

With respect to the security deposit, the tenant testified that the tenants have not provided the landlord with a forwarding address in writing. The *Act* specifies that a landlord does not have to return a security deposit or pet damage deposit to a tenant if the tenant does not provide a forwarding address in writing within a year after the tenancy ends. Once a landlord receives a forwarding address in writing, the landlord will have 15 days to return the deposit(s) in full or make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do so, the tenant may claim double.

In summary, I find that the tenants have established a claim of \$469.82 for paint and supplies, \$500.00 for time and labor for painting, and \$200.00 for moving expenses. Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,269.82.

This order is final and binding and may be enforced by filing it in the Provincial Court of British Columbia, Small Claims division as a judgment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 20, 2022

Residential Tenancy Branch