# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNETC MNDCT FFT

Introduction

The tenants seek compensation against their former landlords pursuant to sections 51(2), 67, and 72 of the *Residential Tenancy Act* ("Act").

Both parties, including counsel the landlords, attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Are the tenants entitled to compensation?

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began April 15, 2015. The tenancy ended on May 15, 2021 after the landlords issued a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (hereafter the "Notice") on December 28, 2020. A copy of the Notice was in evidence.

The first part of the tenants' claim is for $2,808.00. This amount is comprised of the amount the tenants paid in rent for September and October of 2020. The claim is based on the tenants' position that, due to repairs being made to the rental unit after the dishwasher flooded the property, they "were at times without basic amenities such as toilet, kitchen sink, washer/dryer, bedroom, laundry room, that are all included in the rental agreement." None of the tenants' personal property was damaged.

According to the tenants, the water damage occurred because the water pressure in the rental unit was around 90 psi ($lbf/in^2$), whereas it ideally ought to have been between 60 and 70 psi. There was apparently no pressure relief valve installed that might have prevented the leak.

The repairs were, from the tenants' perspective, much bigger and more extensive than what were actually necessary. And the landlords were simply taking advantage of the situation – "the flood damage was seen as a blessing in disguise" – in order to increase the selling price of the property. In summary, the tenants argued that while the repairs took three months, they are seeking two-thirds of the rent that they paid during that time.

Regarding the second portion of the tenants' claims, the tenants argued that the landlords never had the intent to demolish the property. They did not, they argued, issue the Notice in good faith. Moreover, they argued that the landlords were colluding with the buyers. Indeed, they testified that the property was listed for sale a mere ten to fourteen days after the tenancy ended. The tenants submit that they were wrongfully evicted and that they are entitled to compensation under section 51(2) of the Act.

Landlords' counsel summarized the facts, and a written submission on those facts was in evidence. I will not reproduce in any great length those submissions; the parties have them. However, a few points are noted.

The insurance company and the restoration company were the entities that drove the pace and scope of the repairs. The restoration company was on-site on August 4, and repairs were underway in September. The tenants were asked to temporarily relocate off-site in order for the repairs to be completed earlier, but the tenants declined. Repairs started on September 4 and by October 9 the repairs were completed. This included repairs to sinks, flooring, walls, and cabinets. It was further noted that the only "extra" repairs or renovation that took place was the replacement of a 17-year-old floor.

Landlords' counsel further submitted that the tenants had running water, access to the bathroom, and everything else for the duration of the repairs. However, they conceded that the tenants were without the use of the kitchen sink from September 21 to October 1, 2020, a period of nine to ten days. In total, there was a period of approximately 9.5 weeks between when the water damage occurred and when the repairs were completed. The repairs themselves took five weeks.

Analysis

The standard of proof in this type of application is that of 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.

*1. Claim for compensation under sections 7 and 67 of the Act*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) 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.
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> . . .
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> 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 first claim relates to the tenants' argument that they were "at times without basic amenities such as toilet, kitchen sink, washer/dryer, bedroom, laundry room, that are all included in the rental agreement."

Any compensation from the reduced access to, or use of, these facilities or services would flow from a breach of section 27 or section 28 of the Act. Section 27(1) of the Act states that

> A landlord must not terminate or restrict a service or facility if
>
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b) providing the service or facility is a material term of the tenancy agreement.

And section 28 of the Act states that

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

In this case, there is no dispute that the tenants were inconvenienced by the repairs that were being done. Whether the repairs themselves might have been done quicker had the tenants not occupied the rental unit is possible, but there is no persuasive evidence before me to find that it necessarily would have been completed sooner, as suggested by landlords' counsel. There is no evidence, for example, of the tenants deliberately getting in the way of the work being done.

The tenants argued that they were at times without basic amenities such as toilet, kitchen sink, washer/dryer, bedroom, and the laundry room. The landlords disputed this, however, and submitted that they continued to have access to everything and that the only facility for which they had no use was the kitchen sink for nine or ten days.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the tenants have not proven that they were without basic amenities. Further, the descriptor “at times” lacks the required specificity from which a calculation of damages may be made. Last, a claim of two months’ worth of rent in the amount of $2,808.00 is wholly disproportionate to whatever brief, occasional lack of access to the use of the facilities and the rental unit may have occurred. In other words, it is my finding that while the landlords may have breached the Act and the tenancy agreement, the tenants have not proven a reasonable and persuasive amount of compensation for a breach.

In summary, taking into careful consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not discharged their onus of proving a claim for compensation under sections 7 and 67 of the Act. This aspect of their application is dismissed.

*2. Claim under section 51(2) of the Act*

The second claim is made under section 51(2) of the Act. As briefly explained during the hearing, it is the section of the Act that was in force at the time the Notice was given that shall be applied. This section of the Act, as it was in force on December 28, 2020 (www.canlii.org/en/bc/laws/stat/sbc-2002-c-78/144175/sbc-2002-c-78.html) states:

> Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
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> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this dispute, the landlord, at the instructions of the purchaser, issued the Notice on December 28, 2020. The Notice indicated that the tenancy would end on May 15, 2021, and the stated purpose for ending the tenancy was that the landlords intended to demolish the rental unit. This purpose is permitted and in compliance with a reason for ending a tenancy under section 49(6)(a) of the Act.

The tenants did not dispute the Notice and they vacated the property on May 15, 2021. The closing date on the purchase was May 17, 2021. While the purchaser briefly relisted the property for sale on June 15, 2021, the listing was for a sale of the property to be demolished. Demolition itself started in August and was delayed because of the lack of availability of contractors. In addition, due to the age of the property, a pre-demolition hazard assessment was required, specifically for asbestos abatement purposes. This report also took some time. By October 2021 the property, including the carriage house rental unit, was completely demolished.

There is, with full respect to the applicants, no evidence for me to find that the landlords (or the purchaser, for that matter) did not take steps within a reasonable period after the effective date of the notice (May 15, 2021) to accomplish the stated purpose for ending the tenancy: to demolish the rental unit. It is my finding that steps were taken within a reasonable period to demolish the property, and those steps included completing a pre-demolition hazard assessment for asbestos, and then retaining the necessary contractors to demolish the property.

That the purchaser briefly listed the property for sale “for demolition purposes” does not, I find, deviate from the stated purpose for ending the tenancy. Nor, I find, does the sale of the property from the landlord to the purchaser change the fact that the demolition was the reason for ending the tenancy, and that the demolition eventually occurred. More on this point: even if the applicants *had* named the purchaser as a respondent in this action – which would have been entirely consistent with the wording in the Act which states that “the landlord or, if applicable, the purchaser who asked the landlord to give the notice” – the conclusion would, based on the evidence of what occurred, have been the same.

As a brief aside, I acknowledge the tenants’ submissions regarding whether the Notice was issued in good faith. This underlays the tenant’s brief testimony regarding the credibility of the respondents. However, in determining if compensation is granted under section 51(2) of the Act, whether a notice was issued in good faith is, in fact, irrelevant. The time to call into whether a notice to end tenancy is being issued in good faith arises only when the notice itself is disputed, which in this case it was note.

In summary, after taking into consideration all of the evidence, and applying the law to the facts, it is my finding that the tenants have not, on a balance of probabilities, met the onus of proving a claim for compensation under section 51(2) of the Act. Thus, this aspect of the tenants’ application is dismissed without leave to reapply.

*3. Claim for Application Filing Fee*

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants did not succeed in their application, the claim to recover the cost of the filing fee is dismissed.

Conclusion

The application is hereby dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: March 9, 2022

Residential Tenancy Branch