



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRT, RPP, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for compensation for emergency repairs, for an Order requiring the Landlord to return personal property, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant with the initials “JM”, hereinafter referred to as “JM” stated that sometime in October of 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on October 05, 2021 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 05, 2021 the Tenants submitted additional evidence to the Residential Tenancy Branch. “JM” stated that this evidence was served to the Landlord, via registered mail in November of 2021. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 14, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, in April of 2021. “JM” acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is there a need for an Order requiring the Landlord to return personal property or are the Tenants entitled to compensation for that property?
Are the Tenants entitled to compensation for emergency repairs?

Background and Evidence:

The Tenants submit that the tenancy began on July 01, 2019. The Agent for the Landlord submits that it began on July 01, 2018.

The Tenants and the Agent for the Landlord agree that:

- The rent was \$2,000.00;
- Rent was due by the first day of each month;
- The Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use, which declared they must vacate the rental unit by October 30, 2021;
- When the tenancy began the residential complex had a pool, which was not working;
- They did not discuss the pool prior to the start of the tenancy;
- The property was sold in November of 2021.

The Tenants are seeking compensation of \$7,900.00 for replacing a removable pool liner, a filter basket for a pool, a pool cover, and a pool roller.

The Tenants are seeking compensation of \$1,700.35 for expenses they incurred to make the pool operable.

The Tenants are seeking compensation for emergency repairs made during the tenancy. This includes \$300.00 replacing 2 toilets, \$50.00 for replacing a dishwasher, \$100.00 for replacing a stove, and \$100.00 for replacing a dryer.

“JM” stated that:

- When this tenancy began, she understood the pool was not functional;

- In May and June of 2021, the Tenants purchased a removable pool liner for \$6,800.00; a filter basket for \$450.00, a pool cover and a pool roller for \$650.00;
- She asked the Agent for the Landlord to pay for these items purchased for the pool when they were first purchased, but he did not agree to do so;
- The Tenants paid \$1,700.35 to make repairs needed to render the pool functional;
- The Landlord never agreed to pay for any of the repairs needed to render the pool functional;
- The Tenants gave the Landlord verbal notice that they would be vacating the rental unit on September 30, 2021;
- The Tenants vacated the unit on September 10, 2021;
- The rental unit had a digital entry lock, so keys did not need to be returned to the Landlord;
- The pool liner, filter basket, pool cover and pool roller were left at the rental unit because the Agent for the Landlord agreed to purchase them;
- The Agent for the Landlord agreed to pay \$4,500.00 for the pool items;
- The Agent for the Landlord did not pay the Tenants the agreed upon \$4,500.00, so they returned to the rental unit on September 20, 2021 for the purposes of removing the pool items;
- The Agent for the Landlord came to the rental unit on September 20, 2021 when they were preparing to drain the pool for the purposes of removing the pool liner;
- The Agent for the Landlord would not permit them to remove items from the pool and he contacted the police;
- The police came to the rental unit and told the Tenants they must leave the property, so they left the property without their pool liner, filter basket, pool cover and pool roller;
- At various times during the tenancy they replaced two toilets, a dishwasher, a stove, and a dryer;
- They informed the Landlord of the need to replace toilets and appliances at various times, although they do not recall those dates; and
- They never provided the Landlord with receipts for the toilets and the appliances that were replaced.

The Tenant with the initials "KM" stated that when the Landlord came to the rental unit on September 20, 2021 while the Tenants were preparing to drain the pool.

The Agent for the Landlord stated that:

- When this tenancy began; he did not tell the Tenants the pool would be functional;
- The Tenants asked him to pay for items for the pool, but he did not agree to do so;
- The Tenants did not give the Landlord notice that they would be vacating the rental unit on September 30, 2021;

- He saw the Tenants moving out of the rental unit on September 10, 2021;
- He went to the rental unit on September 20, 2021 because he observed the Tenants on the property;
- The Tenants were not preparing to drain the pool on September 20, 2021;
- He contacted the police and told them nothing on the property belonged to the Tenants;
- The police told the Tenants they must leave the property;
- He no longer has legal possession of the rental unit, as it was sold in November of 2021;
- He agreed to pay \$2,000.00 for the pool items;
- He did not pay the Tenants the agreed upon \$2,000.00, because when the Tenants left the property, they left the stove on and left the windows open;
- The Tenants never told him there was a need to replace toilets, a stove, a dish washer, or a dryer; and
- The Tenants never provided him with receipts for replacing toilets or appliances.

The Assistant to the Tenants stated that:

- The Agent for the Landlord breached the *Act* by refusing to permit the Tenants to remove the pool items;
- Had the Landlord completed a condition inspection report at the start of the tenancy, he would have known the toilets and appliances were not working properly; and
- Had the Landlord completed a condition inspection report at the end of the tenancy, he would have known the toilets and appliances were now working properly.

“JM” stated that she was not given receipts for the filter basket, pool cover and pool roller, as she paid cash for those items. The Tenants submitted an email from an individual who stated that invoices were not provided as the Tenants made cash payments. “JM” stated that the individual who wrote this email was the person who sold the Tenants the filter basket, pool cover and pool roller.

Analysis:

On the basis of the undisputed evidence, I find that a functional swimming pool was not provided as a term of this tenancy.

In the basis of the undisputed evidence, I find that the Tenants incurred costs to make the pool functional. I find that the Landlord is not obligated to compensate the Tenants for costs, however, as the Landlord was not obligated to provide a functional pool as a term of the tenancy. I therefore dismiss the Tenants’ claim for \$1,700.35 for repairing

the pool.

On the basis of the undisputed evidence I find that the Tenants purchased a removable pool liner, a filter basket for a pool, a pool cover, and a pool roller. As the Landlord was not obligated to provide a functional pool as a term of the tenancy, I find that the Landlord was not obligated to pay for these items when they were initially purchased.

Regardless of whether the Agent for the Landlord agreed to pay \$4,500.00, as the Tenants contend, or the Agent for the Landlord agreed to pay \$2,000.00, as the Agent for the Landlord contends, I find that at the end of the tenancy the Agent for the Landlord agreed to purchase the removable pool liner, the filter basket, the pool cover, and the pool roller.

On the basis of the undisputed evidence, I find that the Tenants left the removable pool liner, the filter basket, the pool cover, and the pool roller on the residential property when they vacated the unit on September 10, 2022 because the Agent for the Landlord had agreed to purchase them.

On the basis of the undisputed evidence, I find that the Agent for the Landlord subsequently refused to pay any money for the removable pool liner, the filter basket, the pool cover, and the pool roller.

Residential tenancy legislation does not grant me authority to consider all disputes between landlords and tenants. I only have authority to consider disputes between landlords and tenants in regard to their tenancy agreement. If a landlord subsequently agrees to purchase an item from a tenant, I do not have authority over that agreement, as it is beyond the rights and obligations established by the legislation. I therefore find that I cannot enforce the agreement to purchase the removable pool liner, the filter basket, the pool cover, and the pool roller, as that is beyond my jurisdiction.

As the Agent for the Landlord did not pay for the removable pool liner, the filter basket, the pool cover, and the pool roller, I find it reasonable to conclude that they remained the Tenants' property.

On the basis of the testimony of the Tenants, I find that the Tenants went to the residential property on September 20, 2021 for the purposes of removing the removable pool liner, the filter basket, the pool cover, and the pool roller. Although the Agent for the Landlord contends that they were not in the process of removing those items when

he arrived at the property, I find it reasonable to conclude that this was their intent.

On the basis of the undisputed evidence, I find that the Agent for the Landlord contacted the police on September 30, 2021 and that the police directed the Tenants to leave the residential property. I find that this prevented the Tenants from removing the removable pool liner, the filter basket, the pool cover, and the pool roller.

Section 36(3) of the *Residential Tenancy Act (Act)* stipulates that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property. I find that the Landlord breached section 36(3) of the *Act* when he contacted the police and told them that nothing on the residential property belonged to the Tenants. Had the Agent for the Landlord informed the police that the Tenants had purchased the pool items and he had not purchased them from the Tenants, I find it highly likely that the police would not have prevented the Tenants from removing those items from the property.

Section 67 of the *Act* authorizes me to grant compensation to a tenant if the tenant suffers a loss as a result of the landlord not complying with the *Act*. I find that the Tenants suffered a loss as a result of the Agent for the Landlord breaching section 36(3) of the *Act* and I therefore find they are entitled, pursuant to section 67 of the *Act*, to compensation for being unable to remove the pool items.

In addition to establishing that a tenant suffered a loss, a tenant must also accurately establish the amount of the loss whenever compensation is being claimed. In these circumstances, I find that the Tenants have failed to establish that the current value of the pool equipment left at the property is \$7,900.00, which is the amount claimed.

In considering the value of the removable pool liner, I considered the email submitted in evidence which declares the Tenants paid \$6,800.00 for installing a pool liner. Although the email from a pool company declares the Tenants were charged \$6,800.00 for installing a pool liner, it does not declare the actual value of the pool liner nor does it declare the cost of the installation. It may be, for example, that the pool liner cost \$1,000.00 and the cost of installing it was \$5,800.00. I simply do not know these values.

In addition, the Tenants purchased a new pool liner. I find it reasonable to conclude that the liner would have significantly less value now that it has been used. No

evidence has been submitted to establish the value of a used pool liner.

The Tenants did not provide documentary evidence that corroborates the Tenants' submission that they paid \$1,100.00 for the filter basket, pool cover and pool roller, as she paid cash for those items. Although the Tenants submitted an email from an individual who stated that invoices were not provided as the Tenants made cash payments, this invoice does not establish the cost of the items. In addition, no evidence has been submitted to establish the current value of these items now that they have depreciated over time.

On the basis of the testimony of the Agent for the Landlord, I find that he agreed to pay \$2,000.00 for these items. I find that this agreement establishes that the removable pool liner, the filter basket, the pool cover, and the pool roller had a value of at least \$2,000.00. In the absence of evidence to corroborate the Tenants' submission that the Agent for the Landlord agreed to pay \$4,500.00 for the pool items, I find there is insufficient evidence to conclude that they were worth more than \$2,000.00.

As I am satisfied the removable pool liner, the filter basket, the pool cover, and the pool roller had a value of at least \$2,000.00, I find the Tenants are entitled to compensation in this amount.

As the Landlord no longer has legal possession of the rental unit and, by extension, the pool liner, filter basket, pool cover, and pool roller, I am unable to grant the Tenants an Order requiring the Landlord to return these items. As the Tenants have been granted monetary compensation for the items, I find such an Order is not necessary.

Section 33(3) of the *Act* permits a tenant to make emergency repairs in a variety of situations. Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Even if I accepted that the replacement of the toilets, the dryer, the stove, and the dishwasher constituted emergency repairs, I would conclude that the Tenants are not entitled to compensation for those costs. In reaching this conclusion I was heavily influenced by the undisputed testimony that the Tenants did not provide the Landlord with receipts for the repairs. Pursuant to section 33(5) of the *Act*, a landlord is only obligated to pay for such repairs if the landlord is provided with a receipt. I therefore

dismiss the claim of \$550.00 for emergency repairs.

I have placed no weight on the submission that a condition inspection report would have established that the toilets and appliances were replaced during the tenancy. Even if I accepted the items were replaced, the undisputed evidence is that receipts for those repairs were not provided to the Landlord.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$2,100.00, which includes \$2,000.00 for pool items left at the residential property and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be 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: May 31, 2022

Residential Tenancy Branch