



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RUPERT MEWS LP LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR, LRE, OLC, RP, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order limiting or setting conditions of the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord make repairs to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *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 the landlord's agent as well as one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the parties advised that the tenants moved out of the rental unit on September 5, 2022. Since the tenants no longer reside in the rental unit, I dismiss the following claims:

- the application seeking an order cancelling a notice to end the tenancy for cause;
- the application seeking an order reducing rent for repairs, services or facilities agreed upon but not provided;

- the application for an order limiting or setting conditions of the landlord's right to enter the rental unit;
- the application for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- the application for an order that the landlord make repairs to the rental unit or property.

The parties agree that all evidence has been exchanged, all of which has been reviewed and all evidence that I find relevant to the outstanding applications is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for changing locks, changing flooring, pest control, reimbursement of rent, double the amount of the security deposit or pet damage deposit, utilities, other repairs, labour and moving expenses?

Background and Evidence

The tenant testified that this fixed-term tenancy began on July 1, 2022 and was to revert to a month-to-month tenancy after December 31, 2022, however the tenants vacated the rental unit on September 5, 2022. The landlord gave notice to end the tenancy effective on September 30, 2022, and the tenants gave notice on August 29, 2022 to end the tenancy effective September 29, 2022.

Rent in the amount of \$3,000.00 was payable on the 1st day of each month, and there are no rental arrears to the end of September, 2022. On June 13, 2022 the landlord collected a security deposit from the tenants in the amount of \$1,500.00 as well as a pet damage deposit in the amount of \$100.00, both of which have been returned to the tenants in full. The tenants have not provided the landlord with a forwarding address in writing, and the landlord did not cause any move-in or move-out condition inspection reports to be completed. The rental unit is a single family dwelling, and the landlord did not reside on the property during this tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenants have provided an amended Monetary Order Worksheet setting out the following claims, totalling \$14,549.32:

1. \$187.35 for changing locks for the garage door, the exterior bedroom door and the back door;
2. \$467.38 for new flooring in the bedroom;
3. \$325.50 for installation of new flooring in the bedroom;
4. \$108.85 for pest control;
5. \$9,000.00 reimbursement of all rent paid;
6. \$3,200.00 for double the amount of the security deposit and pet damage deposit;
7. \$62.19 for a BC Hydro bill;
8. an unknown amount for another BC Hydro bill;
9. \$98.05 for baseboards and trim;
10. \$1,000.00 for labor and moving expenses.

The tenant testified that the tenant changed the locks for the garage door, bedroom exterior door and back door because the landlord entered the rental unit without notice multiple times. The tenants did not get an order from the Residential Tenancy Branch permitting the tenants to change the locks, but was advised that if the tenants felt their safety is not respected, it's the tenants' choice but the tenants should go through the proper process. The tenants didn't feel that the landlord would respect the *Residential Tenancy Act*. The landlord entered the rental unit at least twice, maybe 3 times. Once was July 29, 2022 for a condition inspection that the landlord insisted on. Then at 9:00 p.m. on August 2, 2022 the landlord emailed the tenants asking for access the next morning at 8:30 a.m., but the tenants didn't see the email and the landlord entered anyway, while the tenants were not home.

When the tenants moved in, the rental unit had not been cleaned; a lot of areas were still very dirty. The landlord entered to clean areas that the tenants had complained about, after the tenants told the landlord to not enter, except for trades people. Multiple emails are in evidence indicating that the landlord was asked not to enter.

With respect to flooring and installation, the flooring in the bedroom of the rental unit was incomplete and not cleanable. There were 1.5 inch gaps around the perimeter and some flooring was missing, showing rough concrete and cracks in the floor full of dust. The tenants asked to have it replaced. The landlord fixed a spot where it was buckled up in the middle of the room, but it was not up to guidelines, full of cracks, partly missing, and uncleanable.

With respect to pest control, the tenant testified that the tenants asked the landlord to clean a boiler room or mechanical room containing the hot water tank and furnace and seal up holes. The smell of feces and urine went through the air vents. Photographs and movies have been provided for this hearing. The pest control company was at the rental unit on July 12, and some time after that made a second visit. The tenants spoke to them and they said they were to do the cheapest service possible, and to not talk to the tenants. The technician said he wanted to seal up holes and a more expensive package, but only the basic package was approved. They initially put out bait stations, and when the tenants asked that the room be cleaned up, the landlord said after 3 visits it would be cleaned. On August 10, 2022, the third visit, the tenants asked the technician about clean-up and the technician cleaned the feces on August 18, and only exterior holes into the boiler room were sealed. The holes between the boiler room and the rental unit were not sealed. The video will show a large hold in the concrete slab from a previous renovation where feces was found by the pest control people hired by the tenants. The landlord said the company the landlord hired did their job, but when the technician arrived on August 18 to clean up the feces, the smell was strong. The tenants called their own pest control company who said that insulation would have to be removed due to feces in it, and the air duct had to be replaced, or flushed and cleaned. Also the room would need to be extensively cleaned, which was beyond their scope. A copy of an Invoice has been provided for this hearing for "Inspection for Odour Source" on August 25, 2022. It states that the foul odour is rodent related and droppings and urine stains were found where the boiler furnace room are located. It recommends treatment as described by the tenant's testimony. The amount of the Invoice is \$108.85.

The tenants gave notice to end the tenancy; the landlord said he wouldn't do any more.

The tenants seek reimbursement of the rent that they paid to the landlord. All of the month of July the unit was being cleaned and worked on, because it looked like it hadn't been cleaned. Rotten food remained in drawers in the kitchen, a toilet plunger with human feces was in the bathroom, grime existed behind the toilet and under the front entrance mats. Due to its condition, the tenants could not enjoy their home. The landlord wanted to do monthly inspections with no reasons, but never did a move-out condition inspection report with the previous tenants. The landlord didn't even go there; had no interest.

The tenant received information that if the landlord fails to do the move-in or move-out condition inspection reports, the tenants are entitled to double the amount of the

security deposit and pet damage deposit. The landlord returned both deposits to the tenants, however the tenants claim double.

The tenants also claim the payment of a \$62.19 BC Hydro bill because since they were not able to enjoy the rental unit, and given that the tenants didn't feel safe, they only slept at the rental unit for 8 days and the balance of the time they stayed with friends.

The other BC Hydro amount in the Monetary Order Worksheet is withdrawn.

The tenant asked the landlord to repair the baseboard and trim. A few small areas had chunks of baseboards broken off exposing cracked drywall and concrete, but the landlord said it's not his responsibility and already up to the Residential Tenancy Branch standards so it didn't matter.

The tenant's \$1,000.00 claim for labour and moving expenses refers to the cleaning in the bathroom and other rooms. The tenants looked at the rental unit prior to moving in and the previous tenants were still there with items all over, but the tenants expected a full move-out clean and be ready to move into.

The landlord testified that he wasn't able to arrange a move-out condition inspection with previous tenants, but the landlord walked through during showings, and the previous tenants said they would clean it. Based on the landlord's relationship with the previous tenants, the landlord trusted that. The landlord hired a cleaner on July 5, 2022, after the new tenants moved in.

The tenants did not have approval to change the locks and the only time the landlord entered unlawfully was on August 3 to let the painter in, and there was no furniture in the unit at that time. The landlord gave the tenants notice to enter on August 2, 2022 at 9:00 p.m., saying that the landlord would be happy to let the painters in if the tenants are not available. The tenants did email the landlord on July 26 asking the landlord not be on the property, then later said only to let in tradespeople. After August 3, the landlord emailed the tenants apologizing, and there was no other time that the landlord entered without permission. The tenants did not need to change the locks.

The tenants were aware of the shape of the carpets when they moved in and wanted the bedroom carpet replaced. The landlord had it glued down, and does not agree with how the tenant has portrayed it. The landlord has also provided photographs for this hearing.

With respect to pest control, the landlord testified that all reports have been provided and the landlord followed the recommendations of the technician. The landlord bought the 3-visit program, and there is no evidence of rodents in the home. On August 18 the room was disinfected, and no further complaints from the tenants until August 29. However, the tenants did not share the report they received from their pest control personnel until providing evidence for this hearing.

The landlord further testified that no reimbursement of rent should be granted. The pest control report is not the same picture that the tenants paint. Cleaning was done and there were no interior pests. The rental unit was not uninhabitable, and other repairs were attended to.

The tenancy agreement specifies that hydro is the responsibility of the tenants; there is no cause for the landlord to pay for that.

With respect to baseboards and trim, the landlord testified that if the tenants had brought it to the landlord's attention, the landlord would have done it. It's a small area that the landlord didn't notice at move-in.

The tenants have not provided receipts for labour and moving expenses.

The landlord had 2 cleaners attend the rental unit, and a few isolated areas were addressed. The landlord agreed to reimburse the tenants but they didn't get a quote from a cleaning company.

The rental unit has not yet been re-rented.

Analysis

Firstly, with respect to the claim for changing locks, the *Residential Tenancy Act* does not permit a tenant to change the locks to a rental unit without an order permitting the tenant to do so. There is no evidence that the tenants feared the landlord, and therefore even if the landlord entered unlawfully, the tenants had an obligation to apply for such an order. The tenants chose not to do so, and I dismiss the tenants' claim of \$187.35 for changing locks.

The *Act* permits a tenant to request reimbursement of emergency repairs, however the law specifies what qualifies as emergency repairs, and specifies what the tenant must do:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this case, the tenants made improvements to the rental unit by replacing carpet, baseboards and trim, none of which are defined as emergency repairs. A tenant may ask a landlord to make such repairs, but if the landlord fails to do so, the tenant may make an Application for Dispute Resolution seeking such an order. However, the tenants did not do so in this case, and I dismiss the tenants' applications for those improvements.

With respect to pest control, the landlord has done his due diligence respecting hiring a professional to do the 3-step program. However, the video provided by the tenants dated July 11, 2022 show that a rodent or other animal had entered through the fireplace. The landlord's 3-step program was completed by August 10, 2022, and the tenants hired a pest control company who attended on August 25, 2022. That was due to the tenants' request to inspect for the source of odour, some 15 days after the landlord's pest control people had completed the program. I also consider the undisputed testimony of the tenant that the technician hired by the landlord was only retained to do the cheapest service. The tenants' pest control technician advised that insulation would have to be removed and an air duct replaced or cleaned, which the landlord was not prepared to do, and the tenants gave notice to end the tenancy. I also consider the numerous emails exchanged between the parties, and I find that the tenants were justified in hiring a pest control company, and I allow the \$108.85 claim.

The tenant testified that he had learned that if a landlord fails to complete a move-in or move-out condition inspection report, the landlord must repay double the amount of the security deposit or pet damage deposit to the tenants. What the law actually states is that a landlord's right to make a claim against a security deposit or pet damage deposit for damages is extinguished if the landlord fails to ensure the reports are completed. A landlord can only be ordered to pay double the amount of the deposit(s) if the landlord fails to return the deposit(s) or make a claim against the deposit(s) within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing. In this case, the tenants did not provide the landlord with a forwarding address in writing. The landlord has returned the deposits to the tenants in

full. Therefore, I dismiss the application for return of any part of the pet damage deposit or security deposit.

The tenancy agreement specifies that hydro is not included in the rent. Whether the tenants actually stayed in the rental unit or not, is not relevant, and I dismiss the tenants' application for reimbursement for the hydro bill.

With respect to labour and moving expenses, I accept that the tenants were not happy with the condition of the rental unit, but I see no reason to order the landlord to pay moving expenses. If a landlord causes a tenant to move out of a rental unit by way of a notice to end the tenancy for landlord's use of the property, the landlord can be ordered to pay moving expenses, which is deemed to be the equivalent of 1 month's rent. The labour described by the tenants was to make improvements, which the tenants were not permitted by law to do, as well as cleaning, and the landlord also hired cleaners. Therefore, I dismiss the \$1,000.00 claim for labour and moving expenses.

However, I am not satisfied in the circumstances that the landlord has provided a rental unit that is in compliance with the housing constructions required by law, or that the tenants were getting what they paid for. The tenancy lasted for less than 3 months, but the tenants paid rent for 3 months. The tenants also apply for return of all the rent they paid during the tenancy. Considering the videos and photographs, I find that the landlord's severe lack of attention to renting a home started at the very beginning of the tenancy.

The tenant also testified that the tenants stayed in the rental unit for a total of 8 days, however I am not satisfied that was necessary in the circumstances. The tenant testified that all of July the unit was being cleaned and worked on, and pest control treatment commenced on July 12, 2022. The tenants took a chance on changing the locks on July 3, 2022 without permission which caused the landlord to issue a notice to end the tenancy. The tenants disputed the notice, but moved out on September 5, 2022 prior to the hearing date. .

The photographs and videos show that the flooring in the bedroom was merely textured mats held together like jigsaw puzzle pieces which were ripped and broken, and quite obviously meant for a garage or a workshop, not a bedroom. The landlord's solution was to glue a portion of it directly to the floor.

I find that since the rental unit was not prepared for a new tenancy to commence, and the tenants suffered a loss of enjoyment of the rental unit, the tenancy was devalued for the entire month of July, and the tenants should be reimbursed for that month of rent.

Since the tenants changed the locks contrary to the law, causing the landlord to issue a notice to end the tenancy, the tenants did not mitigate any damage or loss suffered for the month of August.

With respect to September's rent, I find that the tenants were justified in ending the tenancy. I order that the tenants be reimbursed for 25 days of the month, or \$2,500.00 ($\$3,000.00 / 30 \times 25 = \$2,500.00$).

Since the tenants have been partially successful with the application, the tenants are also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$5,708.85 ($\$108.85 + \$3,000.00 + \$2,500.00 + \$100.00 = \$5,708.85$). The landlord must be served with the monetary order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as a judgment.

Conclusion

For the reasons set out above, 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 \$5,708.85.

The balance of the tenants' application is hereby dismissed.

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 13, 2022

Residential Tenancy Branch