

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlords and the Tenants. The matters initially were each heard separately, but each was adjourned. The hearings were then scheduled to be heard together.

The Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act), submitted on July 16, 2024, is for:

- an Order of Possession based on the vacate clause in a fixed term tenancy agreement under sections 44(1)(b) and 55 of the Act
- an Order of Possession based on a mutual agreement to end the tenancy under sections 44 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

The Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) submitted on August 20, 2024, is for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order regarding the Tenants' dispute of a rent increase by the Landlords under section 41 of the Act
- an order for the Landlords to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order regarding another issue
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

Landlord Y.X.Z. and Landlord S.G. attended the hearing for the Landlords.

M.R. and Translator H. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Landlords acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

The Tenants acknowledged service of the Landlords' evidence and I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

The Landlords acknowledged service of the Tenants' evidence and I find that the Tenants' evidence was served to the Landlords in accordance with section 88 of the Act.

At the first hearing, the Landlords testified that they did not receive the Tenants' evidence within seven days prior to the hearing as required by the Rules of Procedure. The Landlords stated that they may have responded with more evidence or in a more organized fashion if they had more time with the Tenant's evidence. However, the Landlords could not state specifically what evidence or organization was lacking.

The first hearing was adjourned, and the Landlords were given an opportunity to review the Tenant's evidence before the next hearing.

Under Rule of Procedure 3.14 the Landlords, were required to provide their evidence to the Tenants 14 days prior to the first hearing.

The Landlords had the opportunity to review the Tenant's evidence prior to the continuation of their application. The Landlords did not explain what, if any, additional evidence they would have submitted if they had received the Tenant's evidence earlier. I find that the Landlords' were not prejudiced by the Tenants having served their evidence late.

Preliminary Matters

The parties consented to the matters being crossed so that they could be heard together, as the matters are related. Under section 64(3)(a) of the Act, I amended the applications so that these applications could be heard together.

Issues to be Decided for the Landlords

Are the Landlords entitled to an Order of Possession based on the vacate clause in a fixed term tenancy agreement and/or based on based on a mutual agreement to end the tenancy?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

Issues to be Decided for the Tenants

Are the Tenants entitled to Monetary Order for compensation for damage or loss under the Act, regulation of tenancy agreement?

Are the Tenants entitled to an order regarding their dispute of an additional rent increase by the Landlords?

Are the Tenants entitled to an order for the Landlords to provide services or facilities required by law?

Are the Tenants entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Are the Tenants entitled to an Order for another issue?

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on April 1, 2014. The current monthly rent is \$2,380.00, due on first day of the month. The parties disagree on the amount of the security deposit.

The Landlord testified that the Tenants paid a security deposit in the amount of \$750.00 and a “utilities deposit” in the amount of \$750.00. The Tenants testified that they paid \$2,250.00 45 days into the start of the tenancy and that full amount was for the security deposit.

Mutual Agreement to End Tenancy

The Landlords testified that the Tenants verbally agreed to a new tenancy agreement in April 2023 with a fixed term set to end on April, 1 2024. The Landlords gave the Tenants a copy of this tenancy agreement in writing at that time, and the Tenants signed it in January 2024. The dates next to the signatures are April 1 2023. The Landlord provided a copy of this tenancy agreement. The stated reason for the Tenants having to

vacate at the end of the fixed term is for the Landlord's family member to occupy the rental unit.

The Landlords testified that they gave a Mutual Agreement to End Tenancy to the Tenants in April 2023 (the "Agreement to End Tenancy".) The Landlords and the Tenants agree that the Tenants signed the agreement in January 2024, but it was dated as if it was signed on April 1, 2023. The Agreement to End Tenancy stated that the Tenants would vacate the rental unit on April 1, 2024. The Landlords provided a copy of the Agreement to End Tenancy and the tenancy agreement.

The Landlords testified that S.G. reminded the Tenants that they must vacate in April several times. The Tenants testified that the S.G. never told them they had to move out by April 2024.

The Landlords asked the Tenants to move out before April, 2024, but the Tenants refused, so the Landlords were content to wait until April 2024.

When the Tenants did not vacate, the Landlords sent a letter to the Tenants on June 30, 2024 informing the Tenants that they were supposed to have vacated the rental unit in April 2024. The Landlords provided a copy of the letter as evidence.

The Landlords testified that they need the rental unit for their son and his pregnant girlfriend to live in. The Landlords did not issue a Notice to End Tenancy for Landlord's Use of Property. The Landlords application seeks to enforce the Agreement to End Tenancy with an Order of Possession in favour of the Landlord.

The Tenants testified that they were told the 2023 tenancy agreement and the Agreement to End Tenancy were for insurance purposes only, and the Landlord did not intend for the Tenants to actually have to vacate. The Landlords denied this. The Landlords testified that they made it clear to the Tenants that they expected the Tenants to vacate the rental unit at the end of the fixed term on April 1, 2024. The Tenants still reside in the rental unit.

Tenants' Claim for Compensation

The Tenants claim that the Landlord should compensate them for a stove, laundry machines, window screens, anti-slip guards on outdoor stairs, and a backdoor roof.

The Tenants testified that they had to purchase a new stove when the second one the Landlords provided stopped working. The Landlords testified that the Tenants damaged the top of the stove, and did not give S.G. time to investigate it before they just purchased a new one. The new stove that the Tenants purchased, according to the Landlords, is lower quality than the Landlord had provided.

The Tenants testified that there were problems with the laundry machines over the years and the Tenants had to purchase a new washer and dryer. The Landlord required

the Tenants to keep the old washer dryer. The Landlord testified that the issue with the laundry machines was just esthetic, and they worked fine. The Landlord wanted the Tenants to keep them because they still worked.

The Tenants testified that they had to install anti-slip guards on the outdoor stairs because they were not safe. The Tenant M.R. and his daughter had both slipped on the stairs. The Tenants also paid for a roof over the back door in the same area as the stairs to make it safe.

The Landlords testified that they never approved the installation of the anti-slip guards or the roof over the back door. The Landlords believe that they may have to remove that roof as it may not comply with building codes.

The Tenants testified that they purchased screens for the windows because the Landlords refused to provide them. The Landlords testified that they were not required to provide window screens and had never agreed to do so.

The Tenants did not provide details of these costs, nor receipts.

Tenants' Claim for Rent Increases

The Tenants testified that the Landlords have raised their rent every year without providing a notice of rent increase form in advance. The Tenants did not state clearly the rent that was paid in 2013 and 2014. The Tenants testified that they paid rent as follows:

2015- \$1,550.00
2016- \$1,600.00
2017- \$1,700.00
2018- \$1,800.00
2019- \$1,900.00
2020- \$2,000.00
2021- \$2,100.00
2022- \$2,200.00
2023- \$2,300.00 starting April 1, 2023
2024- \$2,380.00 starting April 1, 2024.

The Tenants testified that they were unaware of the requirements in the Act for the Landlords to provide notice of the rent increases in advance. The Tenants said they were not aware of the limits for rent increases allowed by the Residential Tenancy Branch. The Tenants testified that they received a notice of rent increase for 2024. The Landlords testified that they served the notice of rent increases as required but they did not submit them as evidence.

The Tenants provided calculations showing the rent that they paid, and the rent that would have been allowable if the Landlord had followed the Act. In total, the Tenants claim that they overpaid \$18, 410.00 in rent from 2014 to 2024.

The Landlords stated that the Tenants agreed to pay rent each year, and never advised them of any issues. Further, some of the rent increases were due to additional occupants, and for renting out garage space. The Tenants deny this.

The Landlords also provided calculations to show that, if the charges for additional occupants and the garage space are considered, then the Landlords have not even charged the maximum allowable over the term of the tenancy. The Landlords deny that the Tenants ever overpaid rent.

Tenants' Claim for Services

The Tenants' application states that the Landlord has failed to provide safe stairs and fails to repair and maintain in the rental unit. The Landlords testified that they were not told of other issues that required repair.

Tenants' Claim for Landlord to Comply with the Act

The Tenants testified that they agreed to pay a portion of the utilities under the tenancy agreement. The Tenants stated that the Landlord would only send them a zoomed in portion of a bill, or just a hand written number. The Tenants submitted some of these as evidence. The Landlord never provided the Tenants with a copy of a utility bill.

The Tenants stated that they do not know how much to claim for this because they don't know how much the bills were or what they should have been paying. The Tenants want the Landlord to have to pay them for the overpayments of utilities or provide them with the utility statements.

Tenants' Claim for Another Order

The Tenant's application states that the Notice to End Tenancy Should be cancelled. The Landlords testified that they have not served a Notice to End Tenancy. The Tenants did not submit any evidence for this claim. The Tenants also restate that the Landlords failed to provide the utility bills to the Tenants.

Analysis

Are the Landlords entitled to an Order of Possession based on the vacate clause in a fixed term tenancy agreement and/or based on based on a mutual agreement to end the tenancy?

Under Section 44(b), 97(2) (a.1) of the Act, and section 13.1 of the Regulation, a fixed term tenancy may only require a tenant to vacate the rental unit at the end of the

tenancy if the landlord or a close family member of the landlord will occupy the rental unit at the end of the fixed term.

Section 44(1)(c) of the Act states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. The Act does not state when the agreement in writing may be made.

I find that the Tenants signed the Mutual Agreement to End Tenancy in January, 2024, around 10 years after this tenancy started. The Mutual Agreement stated that the tenancy would end in April 2024 which was only four months away. I find that the Agreement to End Tenancy signed by the parties complies with section 44(1)(c) of the Act.

I accept the Landlords' testimony that they gave the tenancy agreement and the Agreement to End Tenancy to the Tenants in April 2023, but did not receive it back until January 2024.

The parties provided contradicting testimony about the purpose of the Mutual Agreement. The Tenants did not provide any evidence that the parties agreed the agreement would not be enforceable. I accept the testimony of the Landlords that they did not tell the Tenants that signing the agreement was for insurance purposes only. I find that the Tenants were not misled about the purpose of the Mutual Agreement.

On a balance of probabilities, I find that the parties are bound by the Agreement to End Tenancy. Having found that the Agreement to End Tenancy is enforceable, it is unnecessary to determine if this tenancy also ended under section 44(1)(5) being the vacate clause at the end of the fixed term tenancy.

Section 55(2)(d) of the Act states that a landlord may request an Order of Possession if the landlord and the tenant have agreed in writing that the tenancy is ended. Section 55(2)(3) states that the director may grant an Order of Possession that is before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Therefore, I find that the Landlords are entitled to an Order of Possession based on a Mutual Agreement to End the Tenancy under sections 44 and 55 of the Act.

Residential Tenancy Branch Policy Guideline 54 states that the Arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I have considered that the Tenants agreed to vacate the rental unit in April 2024. I have also considered the M.R.'s testimony that there are four adults living in the rental unit, one of whom has depression. I have also considered the Landlord's testimony that they need the rental unit as soon as possible for their son to move in.

In consideration of all the circumstances, I find that an Order of Possession with an effective date February 28, 2025.

Are the Tenants entitled to Monetary Order for compensation for damage or loss under the Act, regulation of tenancy agreement?

Under sections 7 and 67 of the Act, to be awarded compensation for a breach of the Act, the Tenants must prove:

- the Landlords have failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the Landlords acted reasonably to minimize that damage or loss

Residential Tenancy Branch Policy Guideline 1 states that landlords are responsible for repairing major appliances.

Section 32 of the Act requires that landlords provide and maintain the rental unit in a state of decoration and repair that “complies with the health, safety and housing standards required by law”, and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Stove

The Tenants testified that they purchased a stove after the one supplied by the Landlords stopped working. The Landlords evidence shows that the Landlords intended to inspect the stove, but the Tenants purchased a new stove shortly after, before the Landlord's had the opportunity to investigate the stove problem.

I find that the Tenants did not allow the Landlord the opportunity to repair the stove before they purchased a new stove and disposed of the one that had been provided. The Tenants have not shown that the Landlords breached the act by failing to repair the broken stove in a reasonable time.

I find that the Landlords did not breach the Act with respect to the stove and therefore the Landlords are not required to compensate the Tenants compensation for this claim.

Washer Dryer

The Tenants testified that they purchased a washer and a dryer, and the Landlords requested that they not remove the current washer dryer unit. The Tenants did not provide any evidence that the washer and dryer the Landlord provided did not function properly. I find that the Tenants have not proven that the Landlords breached the Act with respect to the washer dryer.

The washer and dryer that the Tenants purchased did not replace the ones that the Landlord supplied because those are still at the rental unit. So, the Tenants are at liberty to retain their washer dryer at the end of the tenancy.

Window Screens

The Tenants testified that they purchased and installed nets for the windows to keep out bugs because the Landlords did not provide them.

The Landlords testified that the rental unit was not equipped with window screens, and many of the homes in the area also don't have window screens. The Landlords never agreed to purchase these for the Tenants.

The Tenants have not proven that the Landlords breached the Act with respect to the window screens. In consideration of the age and character of the home, I find that the Landlords are not required under a health/ safety/ other regulation to provide window screens. The window screens are the property of the Tenants, and they are not required to leave them at the rental unit if they are removeable.

Backdoor Roof

I accept the Landlords' testimony that the Tenants installed the roof over the back door without permission. The Landlords want it removed and are not certain that it complies with city's building codes. The Tenants seeks compensation for this roof claiming that it was necessary for the safety of the stairs to the rental unit. The Tenants did not provide evidence that they told the Landlords that the stairs were not safe.

On a balance of probabilities, I find that the Tenants have not proven that the stairs were a health or safety hazard. Therefore, I find that the Tenants have not proven that the Landlords breached the Act with respect to the stairs and roof.

In consideration of the evidence before me, I find that the Tenants have failed to prove that the Landlord breached the Act in relation to any of their claims for compensation. I dismiss the Tenants' claims for compensation without leave to reapply.

Are the Tenants entitled to an order regarding their dispute of an additional rent increase by the Landlords?

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act, which only allows for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase, and by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

M.R. Testified to the rate of rent that he paid throughout this tenancy. The only evidence that was supplied to corroborate the rates of rent, or rate increases, is one handwritten receipt from 2021, and the 2023 tenancy agreement. The Tenants did not provide any

evidence of filing any disputes for the rent increases. Nor is there evidence before me that the Tenants objected to any of the rent increases. I find that the Tenants paid the rent increases willingly each year.

The legal doctrines of waiver and estoppel apply in these circumstances.

A waiver of one's rights may be express, or implied. Residential Tenancy Policy Guideline 11 notes that implied waiver happens without a clear and unequivocal expression of interest. The waiver is implied through the actions or behaviour of the Landlords or Tenants. Implied waiver arises where one party acted in such a way with the other party so as to show an intention to waive his or her rights.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly.

Section 7(2) of the Act and Residential Tenancy Policy Guideline 5 state that the person claiming compensation has a legal obligation to minimize their damage or loss. The Tenants accepted the rent increases throughout this tenancy rather than making an application to dispute the rent increases or expressing their objection to the Landlords. I find that the Tenants did not minimize their loss as required by section 7(2) of the Act.

On a balance of probabilities, I find that the Tenants agreed to the rent increases. The Landlords were entitled to rely on the Tenants actions.

I find that the Tenants implied that they waived their rights under part 3 of the Act by paying the increased rates of rent for about 10 years without making an application to dispute the increase. Based on the legal doctrines of waiver and estoppel, I dismiss the Tenants' claim seeking to be compensated for rent overpayments.

Are the Tenants entitled to an order for the Landlords to provide services or facilities required by law?

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenants' use of the rental unit or providing the service or facility is a material term of the tenancy agreement. A landlord may terminate or restrict a service or facility that is not essential or is not a material term by giving 30 days written notice and reducing the rent in an amount that is equivalent to the reduction in the value of the tenancy.

The Tenants contend that the Landlords did not provide them with safe stairs. The only documentary evidence about the stairs is found in the Landlord's evidence. The Landlords testified that the stairs may need to be removed. The Tenants have not shown that they advised the Landlord that the stairs were unsafe.

The Tenants application also stated that the Landlords ignored the Tenants' requests to repair other issues in the rental unit. The Tenants did not provide any evidence of requests for repairs that were not completed by the Landlords.

On a balance of probabilities, I find that the Tenants have not proven that the Landlords have failed to provide services or facilities required by law or agreed to in the tenancy agreement. Therefore, I dismiss the Tenants' claim for an order for the Landlords to provide services or facilities.

Are the Tenants entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Section 62 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In their application the Tenants claim that the Landlords charged them for utilities without providing them a bill. The Tenants did not provide evidence of the amounts that they paid to the Landlords for utilities such as receipts from the Landlords, or a personal account of payments made to the Landlords. In the absence of any evidence on this issue, I dismiss this claim with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

Are the Tenants entitled to an order for another issued?

The Tenants application included a claim for an order for another issue. In this section of their application, the Tenants request an Order for a Notice to End Tenancy to be cancelled. The Tenants did not submit any documentary evidence of a Notice to End Tenancy.

The Landlords testified that they have not issued a Notice to End Tenancy.

The Landlord's application included a claim for an Order of Possession, but that is not the same as issuing a notice to end tenancy. The matter of an Order of Possession for the Landlords is already decided above.

The Tenants' application for another order is dismissed without leave to reapply.

Are the Landlords entitled to recover the filing fee for this application from the tenant? Are the Tenants entitled to recover the filing fee for this application from the Landlords?

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application. The Tenants are not entitled to recover their filing fee.

Section 72(2)(b) of the Act states that if there is an amount owing from a tenant to a landlord, an arbitrator may deduct that amount from a security or pet deposit due to the tenant.

In accordance with the offsetting provisions of section 72 of the Act, the Landlords may retain \$100.00 from the Tenants' security deposit in satisfaction of the monetary order.

Conclusion

I grant an Order of Possession to the Landlords **effective February 28, 2025 after service of this Order on the Tenants**. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order regarding the Tenants' dispute of a rent increase by the Landlords under section 41 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order for the Landlords to provide services or facilities required by law under section 27 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, with leave to reapply.

The Tenants' application for an order regarding another issue is dismissed, without leave to reapply.

The Tenants' application for another order is dismissed without leave to reapply.

The Tenants' application for authorization to recover the filing fee is dismissed without leave to reapply.

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

Dated: December 29, 2024

Residential Tenancy Branch