Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF LRE MNDC RP RR

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The application from the tenants requested:

- a Monetary Order pursuant to section 67 of the *Act* for damages and loss suffered under the tenancy agreement;
- cancellation of the landlords' Notice to End Tenancy for unpaid rent or utilities pursuant to section 46 of the *Act*;
- an Order suspending or setting conditions on the landlords' right to enter the rental unit pursuant to section 70 of the *Act*;
- an Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*;
- an order compelling the landlords to perform repairs pursuant to section 65 of the *Act*; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72 of the *Act*.

Only tenant L.R. attended the hearing. Tenant L.R. (the "tenant") confirmed that she had authorization to speak on behalf of, and present submissions for tenant J.M.R. The landlords did not attend the hearing. The tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that the landlords were sent a copy of the Application for Dispute Resolution hearing package ("dispute resolution hearing package") and evidentiary packages by way of Canada Post Registered Mail on August 9, 2017. A copy of the Canada Post tracking number was provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the landlords are deemed to have been served with these documents on August 14, 2017, five days after their posting.

Following introductory remarks, the tenant explained that the tenants had vacated the rental unit and were now only looking to pursue their application for a monetary order and a return of the filing fee. Additionally, the tenant said she wished to amend the amount sought in the tenants'

application for a monetary award to $9,308.65 from $10,308.36. As the landlords were not be prejudiced by these amendments, and pursuant to section 64(3)(c) of the *Act,* I amend the tenants' application to reflect these changes.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for losses suffered under the tenancy agreement?

Can the tenants recover the filing fee associated with the application?

Background and Evidence

The tenant provided undisputed testimony that the tenancy began on February 1, 2017 and ended by way of an Order for an End of Tenancy being issued by an Arbitrator on September 1, 2017. Rent was $2,500.00 and a security deposit of $1,250.00 paid at the outset of the tenancy continues to be held by the landlords.

The tenant explained that the tenants were seeking a monetary award of $9,308.36 as compensation for the losses that the tenants suffered under this tenancy. Specifically, the tenants were looking to recover $2,308.36 that they paid to replace flooring in the rental unit, along with a return of $3,500.00 of back rent for 7 months, and $3,500.00 for not having full use of the rental unit and loss of quiet enjoyment over a 7 month period.

During the hearing, the tenant detailed an arrangement she said that the tenants had with the landlords to replace the flooring in the rental unit. The tenant said that the landlords had agreed to pay for the replacement floor after the tenant agreed to use her professional connections to secure a good price on flooring. As part of their evidentiary package submitted to the hearing, the tenant directed me to her written submissions, along with a series of text messages that were printed off and an invoice from the flooring company for the cost of the floors. These text messages evidenced some back and forth between the landlords and the tenants regarding the type and cost of the flooring that was to be installed.

While the landlords were not present for the hearing, a review of their evidentiary package containing written submissions indicates that the landlords understood the agreement regarding replacement of the floors to extend only to the labour associated with the installation of the floors. The landlords wrote in their submissions package, "L.R. asked [about redoing the upstairs flooring] as she works at a flooring store that she would cover the cost of the laminate if I covered the cost of the labour. I thought this was in good faith so I agreed."

In addition to recovering the costs of replacing the floors, the tenants have applied for a monetary award of retroactive compensation for a rent reduction, for not having full use of the rental property, and for loss of quiet enjoyment.

Undisputed testimony was presented at the hearing by the tenant that the tenants suffered from a greatly diminished ability to enjoy the property due to a large amount of construction and garbage that was present in the rental unit. Furthermore, she stated that ongoing renovation works were a constant distraction which continued throughout the tenancy. Finally, the tenant said that the landlords did not allow them to have access to the garage, and blocked the driveway with a boat, a car and various large industrial tools. The tenants reasoned that nothing in their tenancy agreement indicated that they didn't have access to the garage, and therefore the landlords failed to provide them with full access to their rental unit.

It was acknowledged at the hearing that the property was under construction/renovation when they took possession of the rental property; however, the tenant said that she was given numerous assurances that the property would be ready for their arrival. The tenant continued by explaining a lease was signed on October 24, 2016 which indicated they were to take possession on January 1, 2017. Due to ongoing renovations, the rental unit was not available to accommodate them until February 1, 2017. The tenant said several conversations both in person and via text were exchanged between the parties whereby the tenants expressed their displeasure at the quality of the home and the ongoing repairs. The tenant said that on March 7, 2017 the landlords attended the property for 2 days and removed a freezer and some garbage that was present on the property, but that items in the home were not repaired as the tenants had been assured by the landlords.

In their written submissions, the landlords alleged that the photos submitted to the hearing by the tenants that displayed a home under repairs and showing the home with numerous items in the backyard were taken prior to the landlords' purchase of the home. In their submissions the landlords also argued that the tenants did not raise any concerns during their condition inspection report at the start of the tenancy, nor did they as landlords ever make any promises regarding the garage being a finished state. The landlords continued by noting that the boat and car were always parked on the property and that there had been no plans to ever move them. Furthermore, the landlords emphasised that the property was underdeveloped and that the tenants took over the property with full knowledge of this.

At the hearing the tenant acknowledged that the tenants were aware that some work on the property would be required, but she said this work took much longer than the landlords had insinuated it would, and caused a much larger interference than had been anticipated.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must

then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

The tenants have applied for a Monetary Order in two parts. The first involves a return of $2,308.36 that they say was paid by them in good faith for the replacement of some flooring in the home. The tenants maintained that the landlords had agreed to pay for the entire cost associated with the flooring, while the landlords in their written submissions stated that they agreed to only pay for the labour associated with the installation of the flooring.

R v. Parent, 2000 BCPC 11 considers factors that must be evaluated when assessing the credibility of conflicting testimony. These factors include:

1) the witness' ability to observe the events, record them in memory, recall and describe them accurately,

2) the external consistency of the evidence,

3) its internal consistency,

4) the existence of prior inconsistent statements or previous occasions on which the witness has been untruthful,

5) when the evidence is weighted with common sense, does it seem impossible or unlikely? Or does it even "make sense"?

6) motives to lie or mislead the court: bias, prejudice, or advantage.

7) The attitude and demeanour.

After reviewing the written submissions and the undisputed testimony of the tenant, I find that the tenant was able to accurately recall the dates and times of conversations that occurred regarding the arrangement that was in place between the tenants and the landlords concerning the floor. I found the tenant to be consistent in her testimony and I find it reasonable to infer that a landlord would agree to repay a tenant for items that could be purchased at a discount, and would ultimately lead to an increased value of the home. While there is no express statement clarifying that landlords' agreed to pay for the flooring, the tenants supplied text messages to the hearing as part of their evidentiary package which demonstrated that the landlords were inquiring about the cost of the flooring and its installation. After weighing all of the evidence, I am satisfied that the tenants and landlords had an arrangement whereby the landlords had agreed to pay for the flooring and installation. I find that the tenants are entitled to a return of the cost associated with the flooring and may recover a monetary award of $2,308.36.

The second portion of the tenants application for dispute concerns the loss of quiet enjoyment of the rental unit, the loss they suffered from not having full access to the rental home, and the loss

associated with constant disruptions which occurred to ongoing conflicts with the landlords and contractors.

Much undisputed testimony and written evidence was supplied to the hearing by the tenant regarding the fractured nature of the relationship with the landlords that resulted from purported unfulfilled promises on the part of the landlords. Text messages exchanged between the parties at the outset of the tenancy indicate that the parties were in fact relatively friendly and maintained a decent relationship. There is little indication that the tenants objected to the state of the home, and it is apparent based on the text message conversations, that both parties at the outset of the tenancy had respectful conversations regarding the work that was required or being performed.

I do not find sufficient evidence exists demonstrating that the tenants were not aware of the state of the property when they first took possession of the rental unit, and could not have anticipated that the scope and nature of the work would take longer than originally proposed. It is evident that this good natured relationship did not continue and that the parties eventually had a dramatic falling out. I observe that this souring of relations led to increased animosity between the parties which ultimately led both the landlords and the tenants to become increasingly frustrated. I do not find that any evidence exists that the tenants should have been surprised by the state of the property when they moved in. A copy of the condition inspection report signed by the parties at the outset of the tenancy shows that tenants agreed to take possession of the property in the state in which it was offered. Additionally, a copy of the tenancy agreement signed between the parties does not indicate that the tenants had use of the garage or parking.

For these reasons I decline to award the tenants compensation related to their alleged loss under the tenancy agreement.

As the tenants were partially successful in their application, they may, under section 72 of the *Act* recover the $100.00 fee.

Conclusion

I issue a Monetary Order of $2,408.36.in favour of the tenants as follows:

Item	**Amount**
Reimbursement for Flooring	$2,308.36
Recovery of Filing Fee	100.00
Total =	$2,408.36

The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order,

this Order may be filed in the Small Claims Division of the Provincial 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: November 9, 2017

Residential Tenancy Branch