Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNDC FF
Tenants: MNDC OLC ERP RP PSF RR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Landlords' Application was received at the Residential Tenancy Branch on October 7, 2016 (the "Landlords' Application"). The Landlords applied for the following relief pursuant to the *Act*:

- an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants' Application was received at the Residential Tenancy Branch on May 27, 2016 (the "Tenants' Application"). The Tenants applied for the following relief pursuant to the *Act*:

- an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord make repairs to the unit, site or property;
- an order that the Landlord provide services or facilities required by law;
- an order that the Tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by A.G., who was accompanied by S.L., the Landlords' lawyer. The Landlords called one witness, B.B., who provided oral testimony. The Tenants were represented at the hearing by H.T., who was accompanied by J.A., the Tenants' lawyer. All parties giving testimony provided a solemn affirmation.

Counsel for both parties acknowledged receipt of the evidence packages submitted to the Residential Tenancy Branch. Neither party raised any issue with respect to service or receipt of the documents relied upon during the hearing. The parties were provided the full opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties confirmed the tenancy ended on or about September 2, 2016. Accordingly, they were advised that there is no need to address the following aspects of the Tenants' Application:

- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord make repairs to the unit, site or property;
- an order that the Landlord provide services or facilities required by law; and
- an order that the Tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

The parties' lawyers agreed. Accordingly, the only aspects of the Tenants' Application that have been considered are the Tenants' request for an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement, and for an order granting recovery of the filing fee. The Landlords' Application was heard in full.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement?
2. Are the Landlords entitled to recover the filing fee?
3. Are the Tenants entitled to an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2015, and ended on or about September 2, 2016. Rent was payable in the amount of $2,036.00 per month. The Tenant paid a security deposit of $1,018.00. No issues were raised with respect to payment of rent or return of the security deposit.

The Landlords' Claim

The Landlords sought to recover $5,142.85 for what they allege was the excessive use of electricity in the rental unit. A copy of the tenancy agreement was provided with the Landlords' documentary evidence. It confirms that electricity was included in rent and was paid by the Landlord. However, the Landlords rely on clause 10 of the tenancy agreement which states, in part, "the Tenant covenants not to waste any such provided utility."

The Landlords submitted with their documentary evidence a worksheet demonstrating how the amount of the claim was calculated. The amount of the claim was determined by subtracting the average daily consumption for the three years before the tenancy ($5.09) from the average daily consumption during the tenancy ($19.18) and multiplying the difference by the duration of the tenancy. The calculation may be expressed as follows:

($19.18 - $5.09) x 365 = $5,142.85

These calculations were supported by electric billing history date, submitted with the Landlords' documentary evidence.

On behalf of the Landlords, A.G. testified that she lived in the lower suite in the rental unit for 112 days during the tenancy. She testified that she noticed the lights in the Tenants' rental unit were always on, and that the washing machine, dryer and dishwasher were always on. However, A.G. acknowledged that both units were on the same meter and that she contributed to electrical consumption. Further, A.G. confirmed that a number of renovations took place in the lower suite during the tenancy including the installation of murphy beds, kitchen cupboards, a stove, a dishwasher, and a washing machine and dryer. Workmen used tools and electricity during these renovations.

The Landlords called B.B. as a witness. He testified that he was the Landlords' neighbour and that he is familiar with issues that have arisen with respect to the rental unit. B.B. stated that, during the tenancy, light from the Tenants' rental unit "lit up the sky", and stated it appeared every light in the rental unit had been left on. B.B. also testified that he observed the patio door to be frequently ajar.

However, B.B. also indicated he was not sure of the duration of the tenancy, or when the Tenants vacated the rental unit. Further, he confirmed he had only seen the Tenants on a couple of occasions. B.B. acknowledged he could not see the lights at the front of the house because bamboo blocked the view. Finally, B.B. testified he saw workmen at the rental property for a couple of weeks and understood there were some renovations occurring.

In reply, H.T. provided oral testimony. He stated he frequently works as early as 3:00 a.m. to coincide with the time zone where he conducts business. He testified he does not sleep well with the lights on and denied leaving lights on as claimed by the Landlords. Further, he testified that his use of appliances was not as alleged by the Landlords. For example, he advised he would do roughly one load of laundry per week. In addition, H.T. testified that if there was excessive use of electricity, it is because he was not provided with a suitable source of heat. He stated he often used a space heater that he moved around the rental unit because the electric baseboard heat was insufficient to heat the rental unit, and he was not permitted to use the fireplace as a source of heat. The Tenants' evidence in this regard is described further below.

The Tenants' Claim

The Tenants' claim was set out in Schedule "B", which appears in the Tenants' documentary evidence. For simplicity, the Tenants' claims have been addressed in the order presented in Schedule "B". First, the Tenants claimed $200.00 for extra moving expenses. H.T. testified that a large moving truck was in the driveway when his movers arrived to move the Tenants' belongings into the rental unit. Access to the house and driveway were blocked. H.T. testified that he paid the driver an additional $50.00 dollars for the inconvenience but did not remember if any additional amounts were paid.

In reply, A.G. acknowledged the driveway was blocked when the Tenants' belongings arrived and blamed the property manager for making promises the Landlord could not keep during the tenancy.

Second, the Tenants claimed $250.00 for cleaning. This amount is an estimate of the Tenants' loss based on the time the Tenants spent cleaning the rental unit, including the stove, windows, and bathroom.

In reply, A.G. acknowledged the rental unit was not cleaned and confirmed during the hearing that she accepts this aspect of the Tenants' claim.

Third, the Tenants claimed $50.00 for food that spoiled because the freezer did not work properly. H.T. testified the Tenants did not realize the freezer did not work as used it as normal, resulting in a loss.

In reply, A.G. testified that she contacted someone to replace the fridge as soon as the problem became known. The Landlords allowed the Tenants to select the replacement fridge, but it was not available. In any event, the fridge was replaced on or about October 2, 2015. A receipt for the fridge purchase was submitted with the Landlords' documentary evidence.

Fourth, the Tenants claimed $400.00 for two cords of firewood that were purchased for use but had to be given away. According to H.T., the Landlords did not permit the Tenants to use the fireplace, which was important to the Tenants for ambiance and as a source of heat. According to H.T., the Tenants discussed use of the fireplace with the Landlords' agent, who told him where the wood could be stored. On behalf of the Tenants, J.A. submitted that the fireplace was "fixed heating equipment" as provided for in the tenancy agreement, and that this service or amenity was not provided.

In reply, A.G. testified the Landlords were advised the use of the fireplace by the Tenants may have been an insurance issue. S.L. disagreed with J.A.'s characterization of the fireplace as "fixed heating equipment", which he submitted referred to electric baseboard heaters and the like.

Fifth, the Tenants claimed $420.00 for having to leave the house for six days during the tenancy due to renovation noise. This amount was calculated based on $70.00 per day for six days.

Sixth, the Tenants claimed $79.51 as reimbursement for a space heater purchased because the furnace did not function properly. According to H.T., the Landlord was asked to start the furnace because the electric baseboard heaters were insufficient to heat the rental unit. H.T. also suggested that any heat in the rental unit was soon lost because of inadequate insulation. In an email from the property manager to the Tenants, dated November 16, 2015, the property manager stated: "We have been advised that this furnace is broken and is to be removed from the Building…the Rental Unit heat is supplied by the electric baseboard heaters located within the Rental Unit."

In reply, A.G. testified that the furnace did not work when the Landlords purchased the rental property and was never available to the Tenants. Rather, she submitted that the electric baseboard heaters were sufficient. In addition, Multiple Listing Service information, dated April 29, 2015, was referred to in support of A.G.'s assertion that the house included baseboard heat only. A.G. also testified that the furnace was removed from the rental unit after the Tenants vacated.

Seventh, the Tenants claimed $3,240.00 for a loss of access to storage space that was promised by the Landlords. This amount was calculated based on a proposed rent abatement of $270.00 per month for 12 months. According to H.T., storage was important to the Tenants because they were moving from a larger home and needed somewhere to store furniture and other items. In addition, and on behalf of the Tenants, J.A. submitted that storage was a service or facility the Landlords promised to provide in the tenancy agreement, which states:

> *The Landlord agrees to provide the following for the Tenant's use during the Term:*
>
> *…*

B. Non-habitable area(s) of the Rental Unit include any and all carport, garage, locker, crawlspace, unfinished basement areas and sunrooms.

[Reproduced as written.]

H.T. testified that in response to the Landlords' actions, the Tenants "bit the bullet" and stored their belongings throughout the living area. According to H.T., this was inconvenient and prevented the Tenants from having friends and family stay with them as often as they had hoped. The Tenants submitted pictures of personal belongings stored throughout the rental unit.

Further, on or about October 4, 2015, the Landlord installed a permanent wall separating the Tenants' upper unit from what H.T. described as storage areas and the lower unit. In a letter from the Tenants to the property manager, dated November 10, 2015, the Tenants acknowledged the installation of the wall but did not raise any issue with it. At that time, the Tenants' primary concerns appeared to be the operation of the furnace and the repair of some exterior stairs.

In reply, A.G. testified the storage areas were never part of the tenancy agreement. She referred me to an email from the property manager to the Tenants, dated September 25, 2015, advising that listing uninhabitable spaces does not give access to them. Rather, the clause relied upon by the Tenants was included because there had been issues with previous tenants inappropriately using these spaces as sleeping areas.

Eighth, the Tenants claimed $3,600.00 for inconvenience and loss of enjoyment of the rental unit caused by having to store their personal belongings throughout the rental unit. This amount was calculated based on a proposed monthly rent abatement of $300.00 per month for 12 months. Again, the Tenants provided photographic evidence showing numerous items stored throughout the rental unit.

Ninth, the Tenants claimed $2,760.00 for the inconvenience of a lack of heat. This amount was calculated based on a proposed rent abatement of $230.00 per month for 12 months. Relevant evidence regarding the Tenants' allegation of inadequate heating, and the Landlords' response, is included elsewhere in this Decision.

Tenth, the Tenants claimed $240.00 for denial of use of the fireplace. This amount was calculated based on a proposed rent abatement of $20.00 per month for 12 months.

Relevant evidence regarding the Tenants' use of the fireplace, and the Landlords' response, is included elsewhere in this Decision.

Eleventh, the Tenants claimed $1,500.00 for inconvenience and a loss of enjoyment of the rental unit due to noise from the Landlords' dogs, construction noise, odours from cooking and construction, inconvenience due to a freezer and stove that were not functioning optimally, and limited access to garbage disposal. This amount was calculated based on a proposed rent abatement of $250.00 per month for 6 months. H.T. testified it was the Tenants' understanding that they would be the only occupants of the rental property, although the property manager advised that there was no one living in the lower unit. However, the Tenants were advised that the owners might attend the rental property on occasion. H.T. also testified to his understanding that, despite the wording contained in the tenancy agreement to the contrary, the tenancy might continue for as many as five years. The Tenants' submissions were summarized in an email from H.T. to the property manager, dated September 23, 2015, H.T. wrote:

> *When rented, it was the understanding that we would be the only occupants of the house – that it would be empty with the exception that the owners would be visiting occasionally over the next 5 years and that – with proper warning workers would be engaged in renovating the downstairs suite.*
>
> [Reproduced as written.]

On behalf of the Tenants, J.A. also submitted that the rental property is zoned as a single family dwelling, suggesting this zoning prevented the Landlords from having two units in the rental property. However, H.T. acknowledged during the hearing that the Tenants never viewed the downstairs portion of the rental property in any event.

In reply, A.G. testified that the Landlords only attended the property occasionally and referred me to a summary of visits contained in the Landlords' documentary evidence. Further, on behalf of the Landlords, S.L. referred to the tenancy agreement, which includes the term "Upper" to describe the Tenants' rental unit, suggesting there must be a "Lower" rental unit.

Twelfth, the Tenants claimed $1,200.00 for inconvenience and loss of enjoyment of the rental unit due to various acts H.T. characterized as harassment and attempts at humiliation. This amount was calculated based on a proposed rent abatement of

$100.00 per month for 12 months. In reply, A.G. denied the Tenants' allegations of harassment or intimidation.

Thirteenth, the Tenants claimed $2,400.00 for lack of privacy for two months. This amount was calculated based on a rent abatement of $1,200.00 per month for 2 months. H.T. testified that until the wall separating the units was erected, the Landlords had unfettered access to a hallway that was part of the Tenants' rental unit. Relevant evidence regarding the erection of the wall separating the units is included elsewhere in this Decision.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

The Landlords claimed $5,142.85 for what they suggested was excessive use of electricity during the tenancy. Based on the evidence before me, I find there was a significant increase in electrical use during the tenancy. The average daily consumption during the tenancy was almost four times greater than the average daily consumption in the three years before the tenancy began. The tenancy agreement contains the Tenants' covenant not to waste the utilities provided as part of the tenancy. However, A.G. acknowledged the Landlords lived in the lower unit for 112 days during the tenancy – a little less than 1/3 of the duration of the tenancy – and that some upgrades and renovations also occurred during the tenancy. Although it would be virtually impossible to determine with precision each parties' contribution to electrical consumption, I find it is more likely than not that the Tenants contributed significantly to the increased electrical consumption. Accordingly, I find it is reasonable to award the Landlord $2,000.00, to offset the additional amount paid by the Landlord due to significantly increased electrical consumption during the tenancy.

The Tenants' Claim

With respect to the Tenants' claim for $200.00 for extra moving expenses, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover this amount. Although H.T. testified he voluntarily paid the driver and additional $50.00 for the inconvenience of being blocked from entering the rental property, he was unable to recall whether or not any further amounts were paid. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $250.00 for cleaning, A.G. accepted this aspect of the Tenants' claim. I find the Tenants are entitled to a monetary award of $250.00.

With respect to the Tenants' claim for $50.00 for food that spoiled because the freezer did not work properly, I find there is insufficient evidence before me of the value of the loss. I also find that the Landlord responded to the Tenants'' complaint appropriately, replacing the fridge when the problem became known. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $400.00 for two cords of firewood that, according to H.T., had to be given away, I find there is insufficient evidence before me to grant the relief sought. The Tenants had an obligation to minimize their losses. To do so, they could have sold the firewood or stored it on the property for future use. Accordingly, I am not satisfied the Tenants took adequate steps to minimize their losses. Rather, they gave the firewood away. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $420.00 for loss of use of the house for six days during the tenancy due to renovation noise, I find the Tenants are entitled to a monetary award in the amount of $401.64, which reflects, on a pro-rated basis, the rent paid for the six days H.T. testified the rental unit was not occupied ($66.94/day x 6 days).

With respect to the Tenants' claim for $79.51 for reimbursement for a space heater, I find there is insufficient evidence before me that the Tenants are entitled to the relief sought. While the Tenants did submit a receipt for the purchase, and H.T. submitted the baseboard heaters were inadequate, I find there is insufficient evidence before me that existing heat sources were insufficient. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $3,240.00 for a loss of access to what they claimed was storage space, I find there was insufficient evidence before me that the disputed area was part of the tenancy agreement. Although the tenancy agreement refers to non-habitable areas, I find this ambiguous reference did not convey to the Tenants what is typically, and more commonly, referred to as storage. As noted in the email from the property manager, dated September 25, 2015, reference to non-habitable spaces in the tenancy agreement does not necessarily give access to and use of them. I accept that this term was included in the tenancy agreement in response to use of that space as accommodation by previous tenants.

In addition, a party making a claim for relief must take steps to minimize their losses. Although the storage issue was raised by the Tenants at the beginning of the tenancy, and the Landlord erected a wall between the Tenants' rental unit and the disputed area on or about October 4, 2015 – one month after the tenancy began –they did not submit an application for dispute resolution seeking to gain access to the disputed area. Rather, they waited until the tenancy ended to submit an application. In addition, I find there was insufficient evidence before me that the Tenants incurred financial losses as a result. Rather, as indicated by H.T., the Tenants "bit the bullet" and stored their belongings in the rental unit. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $3,600.00 for inconvenience and loss of enjoyment of the rental unit caused by having to store their personal belongings throughout the rental unit, I find, for the reasons described above, that there is insufficient evidence before me to grant the relief sought. The tenancy agreement is unclear regarding the inclusion of storage space, and the Tenants took no steps to gain

access to the disputed area by filing an application for dispute resolution during the tenancy. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $2,760.00 for the inconvenience of a lack of heat, I find there is insufficient evidence before me the Tenant incurred any actual loss. Electric baseboard heat was provided by the Landlords as part of the tenancy agreement, which the Tenants supplemented with a space heater. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for $240.00 for loss of use of the fireplace, I find the Tenants are entitled to recover this amount. On behalf of the Tenants, H.T. testified that a fireplace was important to their decision to rent the unit, both for ambiance and as a source of heat. In addition, H.T. testified the property manager advised where the Tenants were to store firewood. The Tenants' evidence in this regard was not disputed by the Landlords. I find the Tenants are entitled to a monetary award in the amount of $240.00.

With respect to the Tenants' claim for $1,500.00 for inconvenience and a loss of enjoyment of the rental unit due to noise from the Landlords' dogs, construction noise, odours from cooking and construction, inconvenience due to a freezer and stove that were not functioning optimally, and limited access to garbage disposal, I find there is insufficient evidence of the disruption described to award the Tenants the amount sought.

With respect to the Tenants' claim for $1,200.00 for inconvenience and loss of enjoyment of the rental unit due to various acts H.T. characterized as harassment and attempts at humiliation, I find there is insufficient evidence of such behaviour on the part of the Landlords.

With respect to the Tenants' claim for $2,400.00 for lack of privacy for two months, I find there is insufficient evidence before me that the Tenants are entitled to recover this amount. First, the wall separating the upper and lower units was erected on or about October 4, 2015 – roughly one month after the tenancy began. Although the Landlords may have had access to this area during this period, there is insufficient evidence before me that they did so with any frequency, or at all. In addition, this aspect of the Tenants' Application appears to be in direct conflict with the claim for compensation that their access to these areas was prevented by the Landlords. This aspect of the Tenants' Application is dismissed.

Based on the above, I find the Tenants' are entitled to a monetary award in the amount of $891.64, which has been calculated as follows:

Claim	**Award**
Cleaning:	$250.00
Loss of use of house (6 days):	$401.64
Loss of use of fireplace:	$240.00
TOTAL:	**$891.64**

Set-off of Claims

The Landlords have demonstrated an entitlement to recover $2,000.00 from the Tenants. The Tenants have demonstrated an entitlement to recover $891.64 from the Landlords.

Setting off the amounts owed ($2,000.00–$891.64), I order, pursuant to section 67 of the *Act*, that the Tenants pay the Landlords the sum of of $1,108.36.

As both parties' have had some success, I decline to award recovery of the filing fee to either party.

Conclusion

The Landlords are granted a monetary order in the amount of $1,108.36. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 8, 2017

Residential Tenancy Branch