



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S.
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT MT RP

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A request for more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 66;
- An order requiring the landlord to carry out repairs pursuant to section 33;
- An order requiring the landlord to reimburse the tenant for the filing fee.

The hearing also dealt an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (Ten-Day Notice) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both tenants attended the hearing. The property manager KF attended (“the landlord”) and called as witnesses PG and PB, two of the three owners of the corporate landlord. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenants filed an Amendment to their application on June 10, 2019 adding a request for repairs pursuant to section 38.

Each party acknowledged receipt of the other party’s Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

Preliminary Issue

During the hearing, the parties settled certain aspects of the dispute. They agreed as follows:

- The tenants and all occupants shall vacate the property on or before 1:00 PM on July 31, 2019;
- To give effect to the settlement agreement, an order of possession shall be granted to the landlord effective 1:00 PM on July 31, 2019, to be served upon the tenants *only* if they fail to vacate the property;
- The issue of the return of the security deposit shall be dealt with by the parties when the tenants vacate the unit;
- The tenants withdrew their claims under sections 46 and 66.

The parties agreed the issue of whether the tenants were entitled to an order for repairs was moot pursuant to the agreement that the tenants would vacate the unit. The parties also agreed that the only issue between them at the hearing was the tenants' entitlement to a reduced rent for the months of May, June and July 2019. The tenants requested a continued reduction in rent pursuant to an agreement between the parties. The landlord requested a monetary order. Details of each party's positions are addressed later in the decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*?

Is either party entitled to reimbursement of the filing fee?

Background and Evidence

The parties agreed the tenancy began on May 1, 2018 and, as stated above, will end by agreement between the parties on July 31, 2019.

A copy of the 3-year fixed term agreement was submitted as evidence which stated that rent was \$4,750.00 payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$2,375.00 and a pet deposit in the same

amount for a total of \$4,750.00 (the total amount referred to as the 'security deposit') which is held by the landlord.

The Addendum to the agreement stated that the swimming pool is "strictly an amenity and that the use of this amenity is not guaranteed under the terms of the lease". The Addendum stated:

The tenant is responsible for the general maintenance of the swimming pool and/or hot tub. This includes but is not limited to, keeping the swimming pool/hot tub clean of debris, properly maintain chemicals and keeping the pool/hot tube areas clean, neat and organized.

The parties agreed the house was significantly damaged during storms in December 2018 and in early January 2019 requiring the tenants to vacate the unit for 21 days during January.

The parties met on January 31, 2019 to discuss the continuation of the tenancy and agreed as follows:

- The tenants did not have to pay rent for the month of January 2019;
- The tenants would move back in;
- The tenants would pay reduced rent of 60% of the rental (60% of \$4,750.00 = \$2,850.00) owing for February and March a reduction of 40% (\$1,900.00).

The parties later agreed that the tenants would pay 60% of the rent \$2,850.00 for April 2019 as well because significant repairs remained uncompleted.

The landlord demanded rent in full beginning May 1, 2019; when the tenants did not comply, the landlord issued a Ten-Day Notice.

The tenants continued to pay 60% of the rent for May 1 and June 1, 2019 as they claimed repairs were unfinished.

At the time of their application (May 21, 2019), the tenants claimed that significant repairs remained unfinished. In their Application, the tenants stated as follows:

We agreed on 60% rent back in January [2019] when the property was damaged. Since then nothing has been completed and we now have a leak in the pool (completely drained) and the ceiling in the garage is now leaking.

At issue between the parties is whether the agreement for a rent reduction continued for the subsequent three months (May, June and July 2019) until the end of the tenancy. The parties agreed the tenant paid \$2,850.00 for each of May and June 2019. The tenants acknowledged outstanding rent of \$2,850.00 for July 1, 2019 and stated they have not paid rent for the current month pending the outcome of this hearing.

Each parties' position is outlined below.

Landlord's Claim

The landlord submitted substantial documentary evidence and testimony in a lengthy hearing. The landlord explained that the corporate landlord had three owners, two of whom were called to provide testimony at the hearing. The third owner, RD, was not called as a witness and provided evidence in a 42-page affidavit which included many exhibits. Additional materials included several reports from the restoration company (with many photographs and videos), invoices, and copies of correspondence including texts.

In summary, the landlord agreed with the tenants that rent was waived for January 2019 and reduced by 40% to \$2,850.00 for February, March and April 2019. However, the landlord claimed that the rental payment returned to the full amount of \$4,750.00 on May 1, 2019. As the tenants only paid 60% of the rent for the months of May and June 2019, the tenants owe a balance of the rent of these two months and the full rent for July 2019.

The landlord clarified the landlord's claim as follows:

RENT CLAIMED BY LANDLORD	AMOUNT
Rent owing for May 2019 (\$4,750.00 – \$2,850.00 paid by tenants)	\$1,900.00
Rent owing for June 2019 (\$4,750.00 - \$2,850.00 paid by tenants)	\$1,900.00
Rent owing for July 2019	\$4,750.00
TOTAL	\$8,550.00

The landlord's key submissions are as follows:

- The first restoration company report of January 3, 2019 provided information concerning the damage, urgent steps to be take in remediation and scheduled repairs, stating as follows:
 - The roof was leaking, water was entering the house through the ceilings and the basement was flooded;
 - The kitchen and master bedroom ceilings were to be opened to allow drying;
 - The baseboards and vents to be removed;
 - Water was to be diverted from the house, basement wall opened, and laminate floor removed;
 - Drying equipment placed in house.
- Subsequent reports from the restoration company of January 15 and January 21, 2019 and included photographs confirm that drywall and insulation were removed, steps were taken to prevent further damage to decks, flooring was removed, the master bedroom underwent repairs including removal of the ceiling, large fans were placed as needed, and basement flooring was removed.
- The house was uninhabitable for most of January and the landlord agreed with the tenants that no rent was due for that month.
- The landlord agreed the parties met at the end of January 2019 to discuss the rent as repairs were ongoing; they agreed for a rent reduction of 40% so rent would be \$2,850.00 going forward.
- The landlord stated that this agreement was for rent for February and March only (and later extended to April 2019) but rent was due in the full amount of \$4,750.00 on May 1, 2019.
- When the tenants failed to pay the full amount of \$4,750.00 on May 1, 2019, the landlord issued a Ten-Day Notice.
- The landlord stated the unit was repaired in all material aspects by May 1, 2019 and the tenants owe the full amount of rent beginning then; as the unit was habitable and in reasonable condition, the tenants owe the full rent and the agreement between the parties for a rent reduction ended.
- The rent reduction for the months of January, February, March and April 2019 were adequate and overly compensate the tenants for inconvenience suffered by the tenants.
- The landlord carried out repairs in a reasonable and timely manner.
- Any delay in repairs were caused mostly by the tenants: on occasion, they were not available to let workers in; they did not move the large fish tanks in the basement which delayed restoration of the basement.
- The landlord acknowledged that the tenants reported in April 2019 that the pool was leaking and that the pool remains unusable and unrepaired since that time.

The landlord stated that the landlord is currently investigating the reason for the water leak in the pool and believe the tenants themselves may be responsible; the landlord submitted a copy of an email from a pool company dated June 20, 2019 stating that the company, "would need to further investigate and run some leak detection tests to find where the leak is coming from."

- The landlord RD stated in his Affidavit that the landlord did *not* agree to a rent reduction for May 2019 although he acknowledged repairs were ongoing during this month, stating in summary as follows:
 - The pool repairs (reported in April 2019) were not completed;
 - A hot water tank was installed to address water capacity issues (reported at the beginning of the tenancy) at a cost of \$7,500.00;
 - Leaking in the garage was repaired (reported in April 2019);
 - The flooring in the basement was repaired (delays regarding which the landlord attributed to the tenants' failure to move large items which was denied by the tenants);
 - The basement was painted.
- The tenant brought this Application on May 21, 2019 and the landlord brought this Application on June 3, 2019.
- Regarding the condition of the unit in June, the landlord testified as follows:
 - The pool was not repaired, and the landlord refused to accept responsibility as discussed earlier;
 - The garage roof was repaired, and an invoice submitted dated June 11, 2019 in the amount of \$18,438.00;
 - Repairs to the basement were completed.
- The landlord confirmed that the landlord did not obtain insurance coverage for the storm damage but denied that this was a factor in the timeliness of repairs as claimed by the tenants.
- In RD's affidavit, the landlord acknowledged a call on April 29, 2019 from the male tenant about the cleaning of the carpet. A text from the male tenant dated April 29, 2019 is attached to the Affidavit in which he asks, "Can we get a company to come in and clean the rugs in our bedroom?" However, the landlord denied that the carpets were improperly dried and now are alleged by the tenants to contained mold affecting the air quality in the unit.

Tenants' Claims

In summary, the tenants disagreed with the landlord's claim regarding outstanding rent. The tenants claimed that a representative of the landlord, RD, agreed with the tenants that the rent reduction would continue until all repairs were completed. The tenants claimed the repairs have not been completed to this day, with significant repairs only taking place after they filed this Application, and hence the rent remains at the agreed rate of \$2,850.00 a month for May, June and July 2019.

In their testimony and documentary evidence, the tenants' key submissions were as follows:

- The tenants described the unit as a “luxury home”; key to their decision to rent was the presence of a pool as they have a family with two young children.
- Anticipating the house would be their home for three years, the tenants paid for repairs, signage and Christmas lights; the lights were damaged during the roof repairs;
- The tenancy was a “nightmare” from the beginning to the present day, with inadequate water supply, non-operating appliances, and slow or indifferent response from the landlord to complaints and repairs.
- In a letter of January 31, 2019 from the tenants to the landlord, a copy of which was submitted as evidence, the tenants described inadequate water conditions when they moved in; the water tank was finally being replaced in May 2019, 15 months after they moved in and first brought the issue to the attention of the landlord.
- The parties agreed the house was not habitable after the storms and the tenants vacated during structural damage as well as power and water outages.
- The tenants claimed that the power and water outages to the unit and the slow response of the landlord caused “devastating emotional and financial costs to our family” which continue to this day, culminating in their decision to move on July 31, 2019.
- The tenants explained the “devastating emotional and financial costs to our family” in the above letter; this included the inability to enjoy the holidays in their home during December-January 2019. As well, many of their prized belongings were ruined. For example, the male tenant had large aquariums in the basement and lost all the fish and valuable equipment during the power outages including an award winning Red-Asian Arowana (an endangered fish species); food from 2 fridges and 3 freezers were spoiled.
- On January 31, 2019, the male tenant met with RD, one of the owners, and they agreed the rent was reduced to 60% henceforth until the repairs were completed.
- On February 1, 2019, the landlord sent an internal email to the property manager KF, a copy of which was submitted in evidence addressing several issues regarding the tenancy and stating in part as follows:

Rent after Jan/Feb: We will meet with [tenants] before the end of February and agree on an appropriate reduction for March rent if the interior flood repairs are not complete.

- On February 1, 2019, following the meeting, the male tenant sent an email to the landlord stating the tenants will pay the reduced rent for February and March. The email states in part [as written]:

We will resume FULL payment once [RD] and I agree upon [renovations] as completed.

- A subsequent email, a copy of which was submitted as evidence, dated February 4, 2019 from the male tenant to the landlord stated in part as following [as written]:

Gentleman after a follow up discussion with [RD] we have agreed on the following. No rent to be payed for January. This is due to our (rental) home completely not livable for 21 days. This includes part of December and balance in January. We also discussed February and March rent to be set a 2850 for each mnth. That being said [RD] and I will meet at the END of February to view the property and damage. After reviewing any progress collectively we will make a agreement to INCREAS the amount fairly. I will also try to expedite the process of getting our two damaged areas, Master Bedroom and basement living area, back to normal.

- The landlord was denied insurance coverage for the storm damage and without that, the landlord carried out the repairs itself at a slow and piecemeal rate;
- Cooperative and accommodating at first, the tenants became increasingly impatient and frustrated with the leisurely pace of repairs;
- After the tenants withheld rent for March 2019, a text from the male tenant to the landlord stated as follows [as written]:

Yes I'm holding until we have proper water conditions, and a stove that works. Not to mention the house is still a real mess. But I'd like a firm timeline on a stove and water. Not fair we've been more than patient, months waiting for basic living conditions to be met. And not a word or communication or approximate timeline. I'd like a meeting with the landlords, to say my family and I are upset would be a understatement [...] As mentioned, the stove is NOT working and we still can not All have a shower.

- The landlords subsequently agreed the reduced rent only was payable for March and April 2019; the tenants paid the reduced rent of \$2,850.00 for these months.

- The tenants never agreed that the rent would be due in full on May 1, 2019 as substantial work needed to be done, the garage roof started leaking and the swimming pool became inoperable in April 2019;
- The carpets, saturated during the storms, were not dried or replaced; they now have mold, emit an unhealthy odor, cannot be walked on with bare feet, and are suspected to be the source of recurrent respiratory illness in the family.
- Repairs from the storm damage have never been completed.
- Throughout the tenancy, the landlord responded slowly and incompetently to the landlord's obligations to provide repairs.

Analysis

Each party submitted substantial documentary evidence in a hearing that lasted 115 minutes. While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

I find that the landlord and tenants agreed in a meeting on January 31, 2019 as follows: the tenants would not pay rent for January 2019 and, secondly, that the rent was reduced to \$2,850.00 from \$4,750.00 for February and March 2019. Each party acknowledged this agreement.

The tenants claimed the reduction was in effect until repairs to the unit were completed, an uncertain date in the future, to be determined by upcoming meetings between the parties.

On the other hand, the landlord's position is that the rent reduction was only in place until April 1, 2019.

The parties agreed that repairs were not finished on April 1, 2019, and accordingly they agreed that the rent reduction continued for that month. This agreement is documented in the evidence and testimony.

The landlord's position is that no further rent reduction was due to the tenants and the full rent became due and payable on May 1, 2019, even though the landlord acknowledged that the unit was not fully repaired by that date.

The tenants deny that the agreement between the parties was that the rent would increase on May 1, 2019.

I find that the parties agreed the rent would increase *when the repairs were finished* and that they in fact have never been completed. I accept the tenants' version of events in this regard as being the more likely history of what took place. I believe it is unlikely that the tenants would agree to pay full rent on a unit when substantial repairs were not completed after extensive damage of this kind. I also find the tenants' account to be supported by the evidence, including the landlord's own materials which indicate ongoing substantial repairs.

In reaching this conclusion, I have considered the tenant's email of February 1, 2019 to the landlord confirming the agreement, stating:

We will resume FULL payment once [RD-landlord] and I agree upon [renovations] as completed.

The landlord did not submit any evidence showing disagreement with the tenant's email of February 1, 2019. I therefore accept that this email accurately reflects the agreement between the parties.

I have also considered the internal email of the landlord of February 1, 2019 confirming that is indeed the agreement, stating [emphasis added]:

*Rent after Jan/Feb: We will meet with [tenants] before the end of February and agree on an appropriate reduction for March rent **if the interior flood repairs are not complete.***

I find that the unilateral imposition of rent of \$4,750.00 on May 1, 2019 was without the consent of the tenants and was made notwithstanding that substantial repairs to the property remained uncompleted. This, I find, was in violation of the agreement between the parties of January 31, 2019 as reflected in subsequent correspondence.

In summary, I find there was no agreement between the parties that rent would return to \$4,750.00 on any specific date. I find the parties agreed that rent was reduced to \$2,850.00 from February 2019 until the parties agreed otherwise depending on the condition of the unit and the progress of the repairs. I find the parties' own testimony and documents support this conclusion.

In reaching the conclusion that the landlord has not completed repairs, I have considered the restoration company reports, the invoices submitted by the landlord indicating the work done to date, and the testimony of the parties. I find that the tenants'

evidence believable as it provided clear, credible and compelling description of the continuing lack of timely repairs, the slow pace of the work, and the distressing and unsatisfactory current condition of the unit. I accept the tenants' evidence and find that the months of repairs they described led to disruption to their family life, chaos in their home and deep frustration. As discussed earlier, the landlord's own evidence acknowledged that some repairs were only finished in May and June 2019 and certain issues between the parties (the carpets and the swimming pool) have never been resolved. I find the landlord's testimony and documents illustrated an ongoing lackadaisical and half-hearted response to the damage to the unit.

In conclusion, I find the landlord is entitled to rent in the amount of \$2,850.00 for the months of May, June and July 2019 pursuant to the agreement between the parties.

Pursuant to section 72, I grant the tenants a monetary award of \$100.00 as reimbursement of the filing fee. I direct that the tenants may deduct this amount from the outstanding rent on a one-time basis only.

During the hearing, the tenants testified they agreed to pay the landlord the rent for the month of July 2019 in the amount of amount of \$2,850.00. In keeping with my decision, I grant the landlord a monetary award in the amount of \$2,750.00 for rent for the month of July 2019 to account for my award for reimbursement of the filing fee to be served upon the tenants only in the event they fail to pay this amount as ordered.

Conclusion

Pursuant to the terms of the agreement between the parties that the tenancy between them ends on or before 1:00 PM on July 31, 2019 and to give effect to the settlement, I grant the landlord an order of possession effective 1:00 PM on July 31, 2019, to be served upon the tenants only if they fail to vacate the property at that time. If the tenants do not comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I grant the landlord a monetary order in the amount of \$2,750.00 to be served upon the tenants only in the event they fail to comply with the order forthwith. The order may be filed in the BC Supreme Court (Small Claims División) and enforced as an order of that Court.

Pursuant to the agreement between the parties, I direct that the issue of the return of the security deposit shall be dealt with by the parties when the tenants vacate the unit.

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: July 08, 2019

Residential Tenancy Branch