Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1199946 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT CNR LAT LRE MNDCT MNRT OLC PSF RP RR

Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs or emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to change the locks to the rental unit pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fees for their applications from the landlord, pursuant to section 72 of the *Act.*

JS appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' applications for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served

with the tenants' applications. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenants confirmed receipt of the 10 Day Notice dated October 29, 2019. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 10 Day Notice on November 3, 2019, 5 days after mailing.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary compensation for money owed under the *Act,* regulation, or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to an order to allow the tenant to change the locks to the rental unit?

Are the tenants entitled to recover the filing fees for their applications from the landlord?

Background and Evidence

This month-to-month tenancy began on October 26, 2017, with currently monthly rent set at $2,300.00, payable on the first of every month. The tenants paid a security and pet damage deposit in the amount of $1,150.00 per deposit. The current landlord took over this tenancy on March 28, 2019.

The landlord served the tenants with a 1 Month Notice for Unpaid rent dated October 29, 2019. The 10 Day Notice does not contain an effective date, but is dated and signed by the landlord.

The tenants filed an application to cancel the 10 Day Notice. The tenants also filed application for several orders, including an order for the landlord to perform repairs as required, comply with the *Act*, to suspend or set conditions on the landlord's right to enter their home, to allow them to change the locks, to provide facilities or services as required by the Act and tenancy agreement, and for the following rent reductions and monetary orders:

Item	**Amount**
1)Rent Reduction for Repairs & Services not provided	$13,800.00
2) Loss of Work, extra electricity, stress, anxiety	17,500.00
3) Reimbursement – faucet tub, shower ceiling tiles	229.81
4) Reimbursement – plumbing parts, adaptors	51.19
5) Reimbursement – plumbing parts	100.58
6) Reimbursement – plumbing parts	26.23
7) Reimbursement – kitchen faucet	198.82
8) Reimbursement – hot water tank	526.39
9) Used Refrigerator and Dishwasher	672.00
10) Labour for emergency repairs and other repairs by tenant	1,440.00
Total Monetary Order Requested	**$34,545.00**

Both parties provided written submissions and evidence, as well as sworn testimony in the hearing. While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions

and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenants testified that they have had issues with the primary heating system since 2018. The tenants testified that they have had to use the fireplace, and purchase 5 small electric heaters, resulting in 30 to 50 percent higher utility bills. The tenants testified that they were without water for two long weekends, lasting 2-3 days in duration each time, and that they have no air conditioning in the summer.

The tenants testified that when the landlord took over the tenancy on March 28, 2019, they did not hear from the landlord or provided with the landlord's contact information for almost 7 weeks. The tenants testified that as they were unable to contact the landlord they had to undertake many of the repairs themselves.

The tenants submitted a list of items that they had repaired themselves as they were carpenters by trade. The tenants testified that they had replaced the leaking hot water tank, the leaky faucets and showers, and repaired the leaking toilet. The tenants testified that the doors and windows allowed a draft, which has caused them high utility bills and extreme stress and anxiety.

The tenants are also asking for the landlord to repair the rotten deck which his not useable. The tenants testified that there are still many ongoing issues, including a water main that had recently broken.

It was undisputed that the landlord had installed a water filtration system, but the tenants are requesting that water testing be completed as they believe there are issues with the water.

The landlord testified in the hearing that he was disputing the first two items, the rent reduction request and monetary order for anxiety and stress, but that he is consenting to reimburse the tenants for items 4, 5, and 6, the plumbing parts. The landlord testified that he may reimburse the tenants for the other repairs listed, but wanted to see the repairs in person first and confirm the purchases and installation of the parts.

The landlord testified that he had installed the water filtration system on August 15, 2019 when he was informed about the water issues, and that the tenants now have access to clean water. The landlord testified that he had checked the water pressure in the home, and it was normal. The landlord testified that the home was located an organic farm where pesticides were not used. The landlord testified that a heat new pump was also being installed.

The landlord does not dispute that water stoppages did occur, but that the stoppages took place when he had first purchased the property, and the vineyard managers were not used to the irrigation electrical panel, and the breakers would jump. The landlord disputes that these water stoppages lasted for long periods of time.

The landlord testified that the tenants not only failed to mitigate their losses, but that they had in fact contributed to the delay in dealing with the issues by acting hostile towards workers, hiding the key to the water line, leaving hostile notes to vineyard managers and restricting access, and by withholding rent. The landlord testified that it was not easy dealing with the tenants and that they were uncooperative and hostile. The landlord testified that the tenants were experiencing issues before the landlord took over on March 28, 2019, as supported by an email from the tenant to the landlord dated August 22, 2019 where the tenant stated that they had maintained “the house and property for the past 22 months with almost no help from the previous owners” or the current landlord. The landlord also disputes the tenants’ allegations about running over their dog.

Analysis

Section 52 of the *Act* requires that the above Notice complies with the *Act,* specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

As the 10 Day Notice dated October 29, 2019 does not state the effective date of the notice, I find that the 10 Day Notice does not comply with section 52 of the *Act.* On this basis, I allow the tenant’s application to cancel the 10 Day Notice dated October 29, 2019. This tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

As the landlord is not disputing the tenants' monetary claims for repairs for the plumbing parts, I allow these portions of the tenants' claims.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

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

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system…

(v) the electrical systems….

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

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs…

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

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

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

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)…

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

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*
>
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I am not satisfied that the repairs undertaken by the tenants fall under the definition of emergency repairs under section 33 of the *Act*. I accept the landlord's testimony that he had recently taken over this tenancy as of March 28, 2019, and many of the issues existed before he had taken over. I find that this is supported by the tenants' own email to the landlord that they have been dealing with the issues for quite some time. This of course does not excuse the landlord of their obligations, and I order that the landlord perform repairs and maintain the home as required by section 32 of the *Act* as stated above, including repairs to the heating system, and repairs to the deck and other parts of the home as required taking in consideration the age and character of the home.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this matter the tenants bear the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenants' application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 27 Terminating or restricting services or facilities, states as follows,

> **27** (1) A landlord must not terminate or restrict a service or facility if
>
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
>
> (b) providing the service or facility is a material term of the tenancy agreement.
>
> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that running water and heating are considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*. I do not find that air conditioning to be a qualifying service or facility.

In considering whether the tenant is entitled to the monetary order for a reduction in rent, I must determine whether there has been a reduction in the value of the tenancy agreement.

I find the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be “equivalent” to *the reduction in the value of the tenancy agreement.* I find that the requisite calculation prescribed in 27(2)(b) is one predicated on the question of, “what is the reduction in the *value* of the tenancy agreement resulting from the absence of the facility”? Or, “by what amount is the *value* of the tenancy agreement (rent) reduced in absence of facility”?

I have considered the *Act* definitions of**, “rent”, “service or facility”,** and **“tenancy agreement”**, all of which I find comprises the totality of the tenancy agreement. I find that the landlord provided a reasonable explanation for the water stoppages, and that they were not of a long-term or continuous nature. I find that the landlord has not removed any facilities that are included in the tenants’ rent as stated in the written tenancy agreement.

I have also considered Section 32 of the *Act,* which outlines the following obligations of the landlord and the tenant to repair and maintain a rental property. Although I am sympathetic to the tenants about the discomfort that they have experienced during this tenancy, I find these issues existed long before the landlord took over the tenancy at the end of March 2019. I find it undisputed by both parties that the landlord installed a water filtration system to address the tenants’ concerns about the water. Furthermore, the landlord provided testimony about how the tenants have prevented the landlord from making timely repairs by withholding rent, and preventing access.

I am not satisfied that the tenants have provided sufficient evidence to support the rent reductions and losses claimed. I find that the tenants failed to support how they had suffered a loss in the value of $17,500.00 directly and solely due to the landlord’s

actions. On this basis, I dismiss the tenants' application for a rent reduction and monetary compensation without leave to reapply.

As the landlord expressed a willingness to compensate the tenants for the repairs that they had undertaken during this tenancy upon verification of these repairs, I dismiss the tenants' applications for reimbursement of the repairs with leave to reapply.

The tenants also applied for the landlord to perform water testing for the home. I am satisfied that the landlord had fulfilled their obligations by installing a water filtration system in the home. I am not satisfied that the tenants had provided sufficient evidence to support that water testing is required or necessary for health or safety reasons, and accordingly, this portion of their application is also dismissed with leave to reapply.

The tenants also filed an application to suspend or set conditions for the landlord's access to the home, or change the locks. I am not satisfied that the landlord has failed to comply with the *Act* in a manner that requires these orders, and on this basis, I dismiss this portion of the tenants' application without leave to reapply.

The tenants applied for reimbursement for the filing fees for their two applications. As the tenants were partially successful in their applications, I allow the tenants reimbursement of $100.00 for both applications. The remaining portion of the filing fee is dismissed without leave to reapply.

Conclusion

The tenants' application to cancel the 10 Day Notice is allowed. The 10 Day Notice, dated October 29, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord perform repairs and maintain the rental home as required by section 32 of the *Act*.

The tenants' applications for reimbursement for repairs is dismissed with leave to reapply. The tenants' application for water testing is also dismissed with leave to reapply.

I allow a monetary order for the following items:

Item	Amount
4) Reimbursement – plumbing parts,	$51.19

adaptors	
5) Reimbursement – plumbing parts	100.58
6) Reimbursement – plumbing parts	26.23
Filing Fee	100.00
Total Monetary Order	**$278.00**

The landlord must be served with **this Order** as soon as possible. Should the landlord 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.

The remainder of the tenants' application 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 *Residential Tenancy Act*.

Dated: January 17, 2020

Residential Tenancy Branch