



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenants filed their application on August 2nd, 2023, and seek the following:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the “Notice”).
- Reduction of rent for repairs, services or facilities agreed upon but not provided.
- An order for the provision of services or facilities required by the tenancy agreement or law.
- Authorization to change the Rental Unit’s locks.
- An order for the Landlord to comply with the *Act*, *Regulation* and/or tenancy agreement.
- Authorization to recover their filing fee from the Landlord.

The Landlord filed their application on September 11th, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- A monetary order for unpaid rent and authorization to retain the Tenants’ security deposit.
- Authorization to recover their filing fee from the Tenants.

The Landlord acknowledged being served with the Tenant’s application by registered mail. The Tenants acknowledged being served with the Landlord’s application by registered mail and testified that they were served with the Landlord’s evidence in person on September 21st, 2023.

Background and Evidence

The parties agreed that:

- the tenancy began on June 9th, 2023, with a current rent of \$3,500.00 due on the first day of every month, pursuant to a written tenancy agreement, which was signed by the parties on June 9th, 2023 (the “Agreement”).

- The Tenants paid a security deposit of \$1,750.00 to the Landlord on June 9th, 2023.
- The Tenants only paid \$410.00 in August 2023 and withheld all of September and October 2023 rent.
- Pursuant to the Agreement, “utilities are to be paid by the tenants”.

The Tenants testified that they withheld most of the rent in August because of a dispute with the Landlord regarding utilities. After the tenancy had already started, the Landlord required the Tenants to contract with BC Hydro for the entire residential property, despite the basement suite of the residential property being under a separate tenancy agreement with other tenants.

Evidence was provided showing that the Tenants withheld \$3,090.00 in August 2023; \$3,000.00 of which was for “security”, \$50.00 for “the exhaust net” and \$40.00 was the basement tenant’s 40% share of electricity charges. The Tenants withheld September and October rent because they were waiting for the current hearing. Neither party submitted BC Hydro bills, but the Tenants submitted a copy of a text message, wherein they inform the Landlord of the August 2023 withholdings.

The Tenants also testified that when they first moved into the Rental Unit, the Rental Unit was very dirty and left to them in a state of disrepair. During their tenancy, the Landlord ignored the Tenants’ requests for various repairs, including the repair of the Rental Unit’s dishwasher, toilet seat, clogged sinks and the kitchen’s “leaking” oven exhaust. The Landlord also refused to deal with pests in the Rental Unit, including bees that regularly entered the Rental Unit and stung one of the Tenants. The Tenants also testified that they were not informed that it was their responsibility to clean up after dogs, which they do not own, in the backyard.

In their email communication with the Landlord, the Tenants have requested from the Landlord that they be reimbursed for the cost of hiring cleaners. The Tenants did not provide any invoices, but in their email communication with the Landlord they have stated that they paid their cleaner “about \$300.00”.

The Tenants also testified that they incurred losses by paying an electrician to fix power outlets in the Rental Unit which stopped working during the summer. In response to their request for repairs from the Landlord, the Landlord informed the Tenants that they have rented a dated house and they should have known there were issues. They have submitted screenshots of several emailed quotes from electricians. The caption from one of the electrician quotes states the following: “This electrician gave an estimate for \$85 per outlet. So instead, we got it done privately for cheaper... [for] a total of

\$320.00". No receipts have been provided. The Tenants also submitted several videos which showed non-functioning power outlets.

They have also submitted two receipts from SW for their purchase of paint (the "Paint Receipts"). The purchase has been made by PPL. The caption for the picture states that they had an agreement with the Landlord, whereby the Tenants were to paint the Rental Unit in exchange for the Landlord paying for its associated costs. The Tenants did not testify about the particulars of any such agreement during the hearing and the Landlord also did not address this matter.

The Tenants testified that they require authorization to change the locks in the Rental Unit, because the Landlord's other tenants in the basement suite of the Residential Property are students that cannot be trusted and the Tenants fear for their safety.

The Landlord's agent, M.M., testified that the Landlord recently "addressed the situation with the locks, the dishwasher and the toilet" without providing further particulars.

Neither party testified to a condition inspection at the start of the tenancy or produced a condition inspection report as evidence.

Analysis

Unpaid Rent

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 23 of the *Act* sets out the Landlord's requirement to complete a condition inspection at the start of tenancy. As neither party referenced the inspection, I find it is likely that the Landlord did not complete one and breached section 23. The consequences of this are set out in the *Act* and do not include an entitlement for the tenant to withhold rent.

The Tenancy agreement states that rent does not include utilities. However, Policy Guideline 1 states that a term requiring a Tenant to be responsible for utility charges in a unit they do not occupy may be found unconscionable if the term is oppressive or grossly unfair to one party. If the remedy for an unconscionable term was a right to withhold rent, the *Act* would say so and it does not.

I find that that the Tenants did not have a valid reason under the *Act* to withhold rent in August, September, and October 2023. While the conduct of the Landlord may be found unconscionable, section 26 of the *Act* is explicit that a tenant may not withhold rent for such a reason. The Tenants' remedy was to apply to the Residential Tenancy Branch for an order of compliance as well as an order for damages, not to withhold rent.

Section 46 of the *Act* states that a landlord may issue a 10 Day Notice to End a Tenancy if rent remains unpaid after the day rent is due. I find that the Notice complies with the form and content requirements of section 52 of the *Act* because: it gives valid grounds for issuing the Notice and has been completed correctly.

The Tenants' application to cancel the Notice is dismissed and the Landlord is entitled to an Order of Possession. During the hearing the Landlord agreed to a possession date of October 31st, 2023.

The Landlord is further entitled to a Monetary Order of \$10,090.00 in unpaid rent in accordance with section 55 of the *Act*.

In addition, the Landlord has applied to retain the Tenants' security deposit. The Landlord is ordered to retain the Tenant's \$1,750.00 security deposit, along with accrued interest, in the amount of \$11.50 (calculated from June 9th, 2023, to October 9th, 2023), in partial satisfaction of the Monetary Order.

Tenants' application for rent reduction

The Tenants testified to various deficiencies in the Rental Unit, which prompted them to apply for a \$750.00 rent reduction, as well as for orders to the Landlord to comply with the *Act* and to provide services and facilities promised but not delivered. The Tenants have submitted approximately 50 pictures and videos as evidence for various losses, without any identifiable order and without any indices.

The *Act* states a landlord must provide and maintain residential property 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. This obligation applies whether or not a tenant knew of a breach by the landlord at the time of entering the tenancy agreement.

In *Boyes v Wong*, 2016 BCSC 1085, J. Young addresses the standard of care owed by a landlord to a tenant. In paragraph 145, J. Young points out that under the *Act*, landlords have a duty to inspect the rental unit because it is part of their duty to provide and maintain residential premises in a reasonably suitable state under the RTA. In

paragraph 204, J. Young finds that a landlord should annually inspect the property and note any issues including preventative and deferred maintenance as well as life and health safety issues.

Under the *Act*, a party claiming a loss has the onus of proving the loss. The Tenants must therefore satisfy each of the components of the following test if they are to be successful in making a claim for a loss under the *Act*: (i) a loss exists; (ii) proof the loss was solely the result of the actions of the Landlord, in violation of the *Act* or the Agreement; (iii) verification of the actual amount required to compensate for the claimed loss, and (iv) proof that the Tenants took reasonable steps to mitigate the loss.

(i) Dirty Rental Unit

I have identified several pictures and videos purporting to show the dirty state of the Rental Unit. I do not have the benefit of a condition inspection report, however the Tenants testified that the pictures provided show the state of the Rental Unit at the start of the tenancy, which was not disputed by the Landlord. Therefore, I accept the Tenants' testimony that the pictures submitted by the Tenants show the condition of the Rental Unit at the start of the tenancy.

I find that, considering the dirty condition of the appliances, windows and cabinets, the Rental Unit was not left to the Tenants in a condition that would make it suitable for occupation, even considering the age of the Rental Unit.

While the Tenants did not testify how much they spent on cleaning the Rental Unit, in their email to the Landlord they informed the Landlord that they spent approximately \$300.00 on a cleaning service company.

I award the Tenants \$280.00 and reduce the award to the Landlord, for unpaid rent, by an equivalent amount.

(ii) The dishwasher, toilet seat, leaking exhaust, clogged sink, and pests

I have viewed videos of a dishwasher and a toilet. I accept the Tenants' undisputed testimony that both the dishwasher and the toilet were broken from the start of their tenancy and that they notified the Landlord of these problems, which mostly went ignored. M.M.'s testimony that the Landlord recently went into the Rental Unit to address "the situation with the locks, the dishwasher and the toilet" lacked particulars and proves that there were deficiencies in the Rental Unit. The Tenants maintain that the problems are still ongoing, and I accept their testimony.

However, I have not been provided with any evidence that the Tenants spent money fixing the problem.

Under the *Act*, if I find that a party has contravened the *Act*, or the tenancy agreement, I may make an order for past rent to be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement. In this case, I value the loss of the dishwasher and the “toilet seat” at \$30.00 per month, for five months, and reduce the rent owing by the Tenants by \$150.00.

I cannot identify any documents relating to a sink. In addition, the kitchen sink clogging up, based on the evidence provided, is not a deficiency solely attributable to the Landlord. The Tenants’ testimony regarding the exhaust did not go beyond a complaint regarding the exhaust leaking a “fluid”. Upon review of the pictures, the “fluid” appears to be dirty cooking oil. The Tenants testified that there were pests in the Rental Unit, but they only provided pictures of spiders outside of the Rental Unit. Based on the limited testimony and evidence of the Tenants regarding pests, I cannot find a loss. I therefore decline to reduce the rent for pests, the exhaust and the clogged sink as the Tenants failed to prove a loss or a loss that would be solely attributable to the Landlord.

(iii) *Paint Receipts*

During the hearing, the Tenants did not testify regarding the Paint Receipts, nor did they provide any evidence for their claim that the Landlord agreed to reimburse them for the cost of paint. No loss has therefore been proven.

(iv) *Electrical Outlets*

I accept the Tenants’ evidence that they incurred an out-of-pocket loss for repairing the electrical outlets in the Rental Unit, in the amount of \$320.00. I award the Tenants \$320.00 and reduce the award to the Landlord, for unpaid rent, in an equivalent amount.

In total, I award the Tenants \$750.00 as claimed and reduce the award to the Landlord by an equivalent amount.

Provision of services or facilities, locks, and compliance with the *Act*

In their application, the Tenants request “working fridge, dishwasher, stove (exhaust)” and “a safe and healthy living environment”. The Agreement has the following services and facilities checked off: water, garbage collection, free laundry, refrigerator, dishwasher, and stove and oven.

During the hearing, the Tenants did not provide any testimony regarding their refrigerator having a mechanical deficiency and the evidence indicates that their main grievance with the refrigerator was its unclean state. However, they also testified that they cleaned everything by themselves when they first moved into the property. I have viewed a picture of a fridge submitted by the Tenants. Other than its dirty state, I cannot ascertain what mechanical issue the fridge may have, if any, just by looking at a picture.

I have already found that that the Tenants' grievance regarding the stove exhaust is purely cosmetic.

Regarding the dishwasher, their agent M.M., indicated that the Landlord is now addressing the issue. As the tenancy is now ending and as I have already awarded the Tenant an amount equivalent to the loss of the value of the dishwasher, I decline to order the Landlord to fix the dishwasher.

The Tenants have applied for authorization for a change to the Rental Unit's locks. Section 31 of the *Act* states that, during a tenancy, "[a] tenant must not change a lock or other means that gives access to the tenant's rental unit unless the landlord agrees in writing to, or the director has ordered, the change." The Landlord has not consented. I also decline to grant the Tenants authority to change the locks because I am not convinced that, on a balance of probabilities, the tenants living in the basement suite of the residential property in which the Rental Unit is also located in are a danger to the Tenants.

As the Landlord has been successful in their Application, I grant the Landlord authority to recover their \$100.00 filing fee from the Tenants as set out below.

Conclusion

I grant the Tenants their application for the reduction of rent for repairs, services or facilities agreed upon but not provided and dismiss the balance of their application in its entirety, without leave to reapply. The Landlord is granted an Order of Possession, effective on October 31st, 2023, after service of the attached Order to the Tenants. The Landlord is granted a monetary under the terms set out below:

Monetary Issue	Granted Amount
A \$10,090.00 Monetary Order for unpaid rent and for damages incurred, less \$750.00 rent reduction to the Tenants.	\$9,340.00
Less security deposit and accrued interest.	\$1,761.50

Filing fee	\$100.00
Total Amount	\$7,678.50

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: October 10, 2023

Residential Tenancy Branch