



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNL, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application to cancel a Notice ending tenancy for landlord's use of the property; compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The second applicant was removed from the Application, as he is the tenant's son who resides in the home as an occupant.

The tenant withdrew his request to cancel the Notice ending tenancy and the parties entered into a mutual agreement in relation to the end of the tenancy.

Mutually Settled Agreement

The tenant acknowledged service of a 2 month Notice ending tenancy issued on November 30, 2010; effective January 31, 2011.

During the hearing the tenant and landlord agreed that the tenancy will end effective January 31, 2011, at 1 p.m. The tenant is currently in the process of moving out. As part of the mutual agreement of both parties, the landlord has been issued an Order of

possession effective January 31, 2011, at 1 p.m. The tenant's request to cancel the Notice ending tenancy was withdrawn in favour of a mutual agreement.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act in the sum of \$9,425.00?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 1, 2007, rent was \$1,150.00 per month, due on the first day of the month. The parties agreed that all rent has been paid and that the tenant has been provided with 1 month's compensation as provided by the Act; as he did not pay January, 2011, rent owed. The landlord stated that the owner is going to make some repairs and then move into the rental unit.

A copy of an Addendum to the Rental Agreement signed by the parties on November 1, 2007, was submitted as evidence. A copy of any other portion of the tenancy agreement was not supplied as evidence. The addendum does not include any reference to employment services to be provided by the tenant for the landlord.

The tenant has made the following claim for compensation:

Loss of furniture damaged by tree - 2008	375.00
Hydro use for 9 months 2008 - 2009	1093.00
Hydro loss due to improper connection 2008 - 2009	2000.00
Cleaning gutters – labour	135.00
Loss of quiet enjoyment – tree removal	1150.00
Damage to tenant's bikes on property	300.00
Damage to tenant's wood and pool	550.00
Labour to tending fire	60.00
Damage to travel trailer by tree	2000.00
Damage to tenant's vehicle by tree	1212.55
Labour to clean up tenant's personal items	150.00
Water bill from previous tenants - 2007	35.00
Filing fee costs	50.00
TOTAL	9425.55

The tenant and landlord confirmed that on March 11, 2008, a tree fell on a portion of the rental unit. The tenant is claiming costs related to a loss of furniture and the need to clean up the garage. The tenant acknowledged that he has received a cheque in the sum of \$1,000.00 as insurance compensation for his loss, but the tenant submitted he is entitled to further compensation under the Act.

The tenant has claimed loss in relation to hydro costs while the room damaged by the tree was left open to the elements and not sealed. The tenant is also claiming costs for increased hydro charges due to improper wiring. A copy of an April 23, 2010, invoice was supplied as evidence, indicating that electrical work had been completed at the home. The tenant stated that as a result of improper wiring he had to pay unusually high hydro bills. Copies of bills were not submitted in support of this claim.

The landlord stated that no verification of costs claimed have been supplied by the tenant for the hydro costs claimed and that the tenant did not request any intervention by the landlord, despite the landlord's constant presence at the property. The room had been sealed after the tree fell, until repairs could be made.

The tenant and 2 other individuals cleaned the gutters as they were so full of refuse plants were growing in them. The landlord understood the tenant would complete this work but did not pay the bill the tenant submitted for the services provided.

In November 2010, the landlord had a number of trees removed from the property. The tenant was given prior notice of this work and was absent from the property all day during the first week of the project, which lasted 3 weeks. The tenant is claiming a loss of quiet enjoyment, or invasion of privacy equivalent to 1 month's rent, as the work was extremely disruptive.

The landlord stated that the tenant did not approach him to discuss any loss of privacy or disturbances caused by the tree removal project; that the landlord was present on the property much of the time and no complaints were made warning the landlord of the tenant's dissatisfaction. The landlord submitted he first became aware of the tenant's dissatisfaction when the tenant served him Notice of this hearing.

The tenant stated he had bike parts on the property and that the landlord moved these parts, using a machine, resulting in damage to the bikes. The tenant was planning on using these parts to make jewelry. A photograph of the bikes was supplied as evidence. The landlord acknowledged moving the bikes from one location to another, but denied that they were damaged. The landlord stated that the tenant has not provided any evidence of costs incurred to purchase the bikes or repair to the bikes.

The tenant claimed costs for replacement of a thirty foot pool and wood that had been placed under a tree. A photograph of the wood was supplied as evidence and the tenant agreed that the wood remains on the property. The landlord stated that the tenant has not provided any verification of the amount claimed and that they had not seen this pool on the property. A photograph of the pool was not provided as evidence.

The tenant tended a fire on the property, on behalf of the landlord who had started the fire. The tenant claimed labour costs for his time.

The tenant claimed costs for damage to a travel trailer parked on the property. During the tree removal project a tree landed on the trailer and caused damage to the door frame. The tenant stated he has not obtained a repair estimate and believes that the trailer is beyond repair. The photograph of the trailer submitted as evidence showed a dent in the top of the trailer, to the right of the entry and over the front window. The trailer appeared to be aged; however, the tenant was not sure of the age of the trailer

The landlord stated he had previously given the tenant \$50.00 for the dent made to the trailer, that they shook hands in agreement and that if the tenant now believed this was insufficient he could make a claim through his household insurance.

The landlord had piled some trees near the driveway, which could not be seen by the tenant from his vehicle. The tenant hit a tree, causing damage to his vehicle. The tenant supplied a December 1, 2010, estimate from a collision shop in the sum of \$1,212.55 for tailgate repair. The tenant has not made a claim through his vehicle insurance policy and stated that the landlord is responsible for this cost, due to the negligence of the landlord.

The landlord responded that the damage to the tenant's vehicle should be rectified via an insurance claim and that it was the trunk of the vehicle that was damaged.

The tenant claimed costs for cleaning up his belongings that were moved by the landlord.

The tenant claimed costs for payment of a water bill made at the start of his tenancy. The tenant stated this bill was incurred by the previous occupant. The landlord stated that the tenant never talked to him about this at the start of the tenancy and that prior to the tenancy commencing the landlord had paid this outstanding bill.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant, to 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the tenant must prove that he did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In relation to the claim for furniture costs from 2008, I find that the tenant has been previously compensated for his loss suffered as a result of the tree falling on the home and causing damage to his property; therefore, this portion of his claim is dismissed.

In relation to cleaning of the garage; this matter does not fall within the jurisdiction of the Act, as the tenant is claiming labour for services the tenant claims to have provided for the landlord that do not form part of the tenancy agreement.

The dispute related to a failure of payment for gutter cleaning and tending the fire do not fall within the jurisdiction of the Act and are dismissed as these items claimed are a fee for labour charged to the landlord by the tenant.

In relation to the claims made for hydro costs; I find, in the absence of any evidence verifying the claim made, that this portion of the Application is dismissed. I also base this on the failure of the tenant to demonstrate that any effort was made to minimize the claim he is now making, by speaking to the landlord and the absence of any indication on the electrician's invoice submitted as evidence by the tenant, that supported the tenant's claim of loss of hydro due to improper wiring or evidence of increased hydro bills.

The tenant did not provide any evidence of discussions or any other communication with the landlord in which requests were made to adjust the tree removal project in order to minimize disruptions to the tenant. In the absence of any attempt to minimize the claim he is now making and, in the absence of evidence that the tenant approached the landlord to discuss the disruption, I find that this portion of the application is dismissed. Further, the tenant has claimed the equivalent of 4 weeks rent compensation for a period of 2 weeks during which he was home during the tree removal project; an amount that is double the time he claimed to have been disturbed.

In the absence of any evidence of the state of the bikes prior to the landlord moving them, and in the absence of any evidence verifying the loss claimed; I dismiss the portion of the claim related to the bikes. The tenant has possession of the wood and has failed to provide evidence of any loss suffered in relation to the costs claim for a pool; therefore, I find this portion of the claim is dismissed.

The tenant has previously accepted \$50.00 from the landlord for the damage caused to the travel trailer. I find that this matter has been previously settled by the parties and that this portion of the claim is dismissed. Even if the parties had not previously settled, I would find that this matter would fall within the realm of an insurance claim and not the Residential Tenancy Act.

In relation to the claim for vehicle repair, I find that the damage claimed is not within the jurisdiction of the Act. The tenant is at liberty to submit a claim via his vehicle insurance where a determination of responsibility may be made.

The claim for clean-up of the tenant's belongings is dismissed; no matter where the belongings are on the property, the tenant has responsibility for removing them; not the landlord.

The tenant's claim for water bill costs is dismissed. The tenant provided no evidence of payment of this bill.

Therefore; the tenant's claim has been dismissed as follows:

	Claimed	Accepted
Cleaning garage - 2008	315.00	0
Hydro use for 9 months 2008 - 2009	1093.00	0
Hydro loss due to improper connection 2008 - 2009	2000.00	0
Cleaning gutters – labour	135.00	0
Loss of quiet enjoyment – tree removal	1150.00	0
Damage to tenant's bikes on property	300.00	0
Damage to tenant's wood and pool	550.00	0
Labour to tending fire	60.00	0
Damage to travel trailer by tree	2000.00	0
Damage to tenant's vehicle by tree	1212.55	0
Labour to clean up tenant's personal items	150.00	0
Water bill from previous tenants - 2007	35.00	0
Filing fee costs	50.00	0
TOTAL	9425.55	0

As the tenant's claim does not have merit, I decline filing fee costs to the tenant.

Conclusion

The tenant's monetary claim is dismissed.

Based on a mutually settled agreement the landlord has been issued an Order of possession effective at 1 p.m. on January 31, 2011. This Order may be served on the tenant, filed with the Supreme Court of British Columbia 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: January 25, 2011.

Residential Tenancy Branch