



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: ATT, MNDC, MNR, MNSD, FF
Landlord: MNDC, MNR, MND, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenant applied for a monetary order for money owed or compensation under the Act or tenancy agreement, for costs of emergency repairs, for return of all or part of his security deposit, for an order allowing him access to the rental unit, and to recover the filing fee for the Application.

The landlord applied for a monetary order for unpaid rent, damages to the rental unit, for money owed or compensation under the *Residential Tenancy Act* (the "Act") or tenancy agreement, and to recover the filing fee for the Application.

The tenant and his attorney and the landlord's agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I note that the landlord's agent was his daughter who had been granted a power of attorney for the hearing by the landlord, who was out of the country on the day of the hearing. However, it is further noted that the tenant objected to not having the landlord present due to the verbal arrangements and transactions being made solely between the tenant and landlord. However, the agent testified that she was knowledgeable about the two claims and the hearing proceeded in the landlord's absence.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenant to an order for monetary relief?

Is the tenant entitled to an order allowing him access to the rental unit?

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an order for monetary relief?

Background and Evidence

The tenancy agreement entered into evidence indicated that this two year, fixed term tenancy began on October 1, 2010, and was to end on September 30, 2012. The monthly rent was \$1,700.00, the tenant was to pay 50% of the utility bills and the tenant paid a security deposit of \$850.00 on October 1, 2010. The landlord's agent denied that the tenant paid a security deposit.

There is no move in or move out condition inspection report.

The rental unit is the upper floor of a house, and the landlord lives on the ground floor.

Tenant's Application:

The tenant has applied for monetary compensation of \$25,000.00, which includes repairs, labour, and material for the repair and renovation of the rental unit, as well as requesting the landlord to provide emergency repairs and allow him to return to the rental unit.

The breakdown of the monetary claim is as follows:

Materials to start renovation	\$9,945.48
Garbage removal	\$750.00
Tenant's mgt, design and coordination	\$10,000.00
Total	\$31,415.48
Reduced by tenant to maximum allowed under the Act	\$25,000.00

The tenant supplied copies of receipts from home repair and furniture stores and food businesses, hand written notations as to the costs of certain items allegedly for the rental unit, the tenancy agreement and the contract between the tenant and landlord documenting the agreement between the two parties for repair and renovation in exchange for a reduction in rent, with a Farsi to English translation stamped by a member of the Society of Translator and Interpreters of British Columbia (STIBC).

The tenant testified to the following:

The tenant is a certified, licensed contractor in his primary home country, as proven by a copy of the corporation's registration document.

The rental unit was in a state of disrepair at the start of the tenancy and that the landlord agreed that the tenant could bring the rental unit to a renovated state in exchange for a reduced monthly rent of \$1,700.00 instead of \$2,300.00, for two years. The tenant gave the landlord twelve cheques for the monthly rent at the beginning of the tenancy. The contract between the landlord and tenant confirmed the arrangement between the parties.

The tenant expended money for materials and labour in renovating the interior of the rental unit as his part of the bargain, both prior to and during the tenancy; however, the landlord would not make necessary emergency repairs, such as repairing the leaking roof and electrical system, making the rental unit uninhabitable.

Due to the leaking roof, leaking pipes and faulty electrical system, the tenant left in January for his primary home country, but returned to collect his belongings and discovered that the landlord had changed the locks on the rental unit. The tenant's common law spouse also attempted entry into the rental unit and access was denied by the landlord.

The landlord is responsible for the tenant's costs in renovating the rental unit as per the contract terms and that he should be allowed access to the rental unit as he has paid twelve months rent in advance, performed the repairs and renovations and has been deprived of the use and possession.

The tenant's common law spouse and her son occupied the rental unit when he was not there and he would still like to live in the rental unit, despite having been locked out since January 2011.

Landlord's Application:

The landlord has applied for a monetary order for \$25,000.00, as follows:

Changing front door lock	\$168.00
Replace locks on back door of suite	\$150.00
Electrical work and disabled smoke alarm	\$1,680.00

Failed to return garage door opener	\$500.00
Removed all blinds and curtains in suite	\$2,000.00
Broken dishwasher	\$500.00
Disabled the toilets	\$2,200.00
Converted 3 br's into 2 br's by removing a wall without permission	\$5,000.00
Damaged drywall along staircase	\$100.00
Repaint walls and ceiling	\$3,000.00
Unpaid rent for January	\$1,700.00
Loss of rent for 21 months	\$35,700.00
Unpaid security deposit	\$850.00
Unpaid utilities	\$955.75
TOTAL	\$58,203.75
Reduced by landlord to maximum allowed under the Act	\$25,000.00

The landlord supplied into evidence written details of the dispute, a 10 day notice to end tenancy for unpaid rent (the "Notice"), dated January 4, 2011, listing unpaid rent as of January 1, 2011, in the amount of \$1,700.00, a handwritten statement to the tenant alleging that he owed \$711.38 in unpaid utilities, a handwritten note to the tenant informing him of the lock change on January 14, 2011, a Farsi to English translation of the agreement between the landlord and tenant, signed by a notary public, which I note, bears a different translation from the document entered into evidence by the tenant, utility bills, a redacted police report indicating that the tenant or representative gained access to the rental unit despite the lock change, removing belongings, a locksmith receipt, a quote for a new door, an estimate for electrical work, and copies of photos of the rental unit.

The landlord's agent testified to the following:

The tenant paid only three cheques for advance rent and did not pay rent for January, 2011, which resulted in the issuance of the 10 day notice to end tenancy for unpaid rent. After the Notice was issued, the landlord's family heard water running in the upstairs unit, which led them to discover the tenant had changed the locks. The landlord at that time changed the locks again so that he or his family could access the rental unit.

After the lock change, the two occupants attempted to break into the rental unit, causing the landlord to call the police and causing damage to the front door.

The electrical system was three years old, in perfect condition, and that any heating problems were due to the non payment of utilities by the tenant. The tenant had been presented with the utility bills.

During the tenancy, the tenant committed a large amount of damage to the rental unit, including damaging the dishwasher, breaking the toilets, disengaging the alarm system, and removing the refrigerator.

The tenant did not have permission to perform any work in the rental unit, other than removing the carpet, replace that with linoleum and painting of the walls. The tenant was to obtain verbal permission from the landlord prior to performing any renovation work, as demonstrated in the translated document she supplied into evidence.

Upon query, the agent stated that the landlord has made no attempt to re-rent the rental unit.

The tenant's responsive testimony:

The tenant never received copies of the utility bills, the refrigerator belonged to the tenant, he gave twelve cheques to the landlord, who did not want to discuss these matters with his wife due to cultural traditions of the landlord and that his, the tenant's, common law spouse did not receive a copy of the 10 day notice.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, each applicant in this case, must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has 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 whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I accept that the landlord's agent had some knowledge of the tenancy details, but pursuant to her testimony, she has never lived in the home when the tenant was living there. I find that the landlord's agent had no direct knowledge of whether or not a security deposit had been paid or any of the terms of the agreement for repair and renovation of the rental unit. I find the landlord's absence proved detrimental to his claim as I find the landlord's agent's rebuttal testimony lacked conclusive knowledge of the transaction and events of this tenancy.

Tenant's claim:

On a balance of probabilities, I accept the tenant's Farsi to English translation of the Addendum to the Residential Tenancy Agreement due to the document being attested by a certified member of the STIBC. As such, I find that the agreement between the tenant and the landlord stipulated that the tenant was to perform all renovation, and provide expenses, material and labour for work such as repair and change of the floor, ceiling, wall, paint, etc., in return for a reduced monthly rent of \$1,700.00 down from \$2,300.00 for a period of two years. I further find that the agreement stated that the tenant did not require any verbal approval from the landlord for the work and that the tenant was obligated to provide the landlord a "renovated, clean and organized building" at the end of the two year period.

I therefore find that the tenant was not only allowed, but required pursuant to the contract, to renovate the rental unit.

As to the tenant's monetary claim:

- Expenses for Materials- I do not accept all the documentary proof submitted by the tenant. For instance, I do not find the tenant established an entitlement to costs for food, furniture, appliances, and personal items or for illegible or inconclusive receipts submitted by the tenant for this claim. I therefore find that the tenant has established a **monetary claim** in the amount of **\$1,502.01**, consisting of the legible receipts from Home Depot, Rona and Canadian Tire. I

have not accepted the inconclusive, illegible, handwritten and non-relevant receipts.

- Skilled labour-The tenant provided no documentary proof substantiating the claim and I cannot determine upon a balance of probabilities that he expended these sums on the rental unit. I therefore **dismiss** his claim for \$10,720.00.
- Garbage removal- The tenant provided no documentary proof substantiating the claim and I cannot determine upon a balance of probabilities that he expended these sums. I therefore **dismiss** his claim for \$750.00.
- Tenant's management, design and coordination-The tenant provided no basis for this claim and I **dismiss** his claim for \$10,000.00.

In the absence of contradiction from the landlord, I accept the tenant's testimony and the tenancy agreement that the tenant paid a security deposit in the amount of \$850.00 at the beginning of the tenancy and that the landlord has not returned the tenant's security deposit, despite knowing the tenant's forwarding address no later than March 6, 2011, the date of the landlord was served with the tenant's application via registered mail, sent on March 1, 2011. I therefore find pursuant to Section 38(6) of the *Act* the landlord must pay the tenant double the security deposit of \$850.00. I therefore find the tenant has established a **monetary claim** in the amount of **\$1,700.00**.

I allow the tenant the filing fee of \$100.00.

I find the tenant has established a **total monetary claim** in the amount of **\$3,302.01**, comprised of **\$1,502.01** for the allowed materials receipts, **\$1,700.00** for the security deposit doubled and the filing fee of **\$100.00**.

I am enclosing a monetary order for \$3,302.01 with the tenant's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this monetary order.

As to the tenant's claim for an order allowing him access to the rental unit, I find that he did not dispute the Notice to End Tenancy and is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I therefore **dismiss** his claim for an order allowing him access to the rental unit.

Landlord's claim:

Section 23 and 35 of the *Act* requires a landlord to complete an inspection report in accordance with the *Act* and regulation and there is no evidence the landlord complied with the *Act*.

I find that without a copy of a move in or move out condition inspection report, the evidence consisted of disputed, verbal, testimony. When the evidence consists of conflicting and disputed verbal testimony and evidence, then it is virtually impossible for a third party to establish facts and the claim fails.

As to the landlord's monetary claim:

- Damages to the rental unit-In the absence of the condition inspection report or photos, and in this case, receipts, any proof and lack of credibility for sums claimed, I find the landlord submitted insufficient evidence to establish the condition of the rental unit either before or after this tenancy; therefore I find the landlord failed to prove the tenant damaged the rental unit and **dismiss** his claim for damages to the rental unit.
- Unpaid rent for January-The tenant testified that he paid the landlord twelve rent cheques, for the period of October 2010-September 2011. Without the landlord's testimony to contradict the tenant's testimony, I accept that the landlord had been paid for the month of January and I **dismiss** the landlord's claim for \$1,700.00.
- Loss of rent for 21 months-The landlord ended the tenancy with a Notice to End the tenancy and with the lock change. Further the landlord has not provided any evidence that he took steps to minimize the alleged loss and therefore has not met step 4 of his burden of proof. I therefore **dismiss** the landlord's claim for \$35,700.00.
- Unpaid utilities-I find the landlord supplied deficient and inconclusive documentary evidence to establish that the tenant was provided the utility bills or has not paid the bills. I therefore **dismiss** the landlord's claim for \$955.75.
- Security deposit-As I have found that the tenant paid a security deposit, I dismiss the landlord's claim for \$850.00.

Due to the above, I **dismiss** the landlord's application in its entirety, without leave to reapply.

Conclusion

The tenant is granted a monetary order in the amount of **\$3,302.01**.

The tenant's request allowing him access to the rental unit is denied.

The landlord's 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: June 30, 2011.

Residential Tenancy Branch