



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

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. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$8,735.97 for damage or loss under the Act?

Background and Evidence

The tenancy under dispute commenced on April 1, 1996 and ended on January 1, 2012. The property was sold and the parties agree that the tenant vacated the unit on January 7, 2010. A copy of the tenancy agreement was supplied as evidence.

Subsequently, the tenant and landlord entered into another, separate tenancy agreement for a different rural property, which was the subject of a previous claim made by the tenant. A copy of the decision issued on November 22, 2011 (file 779229,) was provided, which among other findings, dismissed the tenant's claim for compensation in the sum of \$8,000.00 for loss of quiet enjoyment.

The tenancy agreement signed by the parties had an appendix A, which was a casual labour agreement. The casual labour agreement indicated that the tenant would help with checking fences, minor repairs, help during hay seasons, feeding and care of farm animals and miscellaneous light farm work.

The casual labour agreement indicated rent would be reduced to \$400.00 per month to reflect the value of casual work. There was no indication that the casual work agreement termination would affect the tenancy.

A copy of a typed note was supplied as evidence that indicated rent had been include to \$500.00 per month effective September 1, 2008.

The tenant has made the following claim within the required 2 year time-frame:

Back deck	938.86
Greenhouse	1000.00
10 X 14 shed	1,500.00
Fire pit	25.00
Garden fence	200.00
Perennials	50.00
Stove	565.00
Compensation for last month's rent	500.00
Loss of quiet enjoyment 2000 – December 2009	
TOTAL	5,685.97

The amount detailed in the claim differed from the total included on the application; \$8,735.99.

The tenant supplied copies of verification documents as follows:

Back deck lumber October 17, 2006	665.07
Back deck lattice July 2, 2008	84.74
Estimate for front deck roof	1,234.39
Front deck supplies – June 8, 2005	319.51
TOTAL	2,492.76

The parties agreed that the landlord issued the tenant a written notice ending tenancy as the result of the property having been sold and that this was why the tenant vacated; a copy of this notice as supplied as evidence. The notice indicated that the tenant must vacate the property by January 15, 2010, as her casual labour was no longer required. The tenant did not receive any compensation as a result of the notice given and is now claiming the equivalent of one month's rent.

The affidavit submitted by the landlord indicated that the tenancy was ended due to a sale of the home and that alternate arrangements were made; allowing the tenant to move to another property owned by the landlord; this was an exchange for the tenant's cooperation.

The rental property was located on a rural, northern property and at the time vacant possession was required in January 2012, the tenant was unable to remove all of her belongings, such as the garden fence, fire pit and perennials. The tenant also wished to be compensated for the decks she had constructed. The belongings were frozen to the ground and it was not possible to remove them.

The tenant did not dispute the landlord's submission that the new property owners offered the tenant \$500.00 for the garden shed, another shed, perhaps the greenhouse, the front porch and back deck. The tenant supplied the original cheque issued to her on January 15, 2012, by the new owners, in the sum of \$300.00. The tenant did not cash this cheque as it was not in the amount she had agreed to with the purchasers.

The tenant replaced a stove, but did take the stove with her when she vacated the property.

The landlord submitted a letter from the purchasers which confirmed they offered \$500.00 for these items; there was no mention of the difference in amount between what had been agreed to and what was given to the tenant. The new owners felt the decks could not be removed from the property unless completely dismantled, and that the sheds were older and not moveable. The new owners indicated they gave the tenant permission to dig up her perennials and that she did so.

The invoices supplied by the tenant were in support of her claim for compensation, demonstrating costs she incurred to build the items on the landlord's property.

The landlord stated the tenant had not been given permission to build these items; that he had asked her to dismantle the back deck; that he had constructed the front deck and the tenant had placed a roof over the front deck without his permission; he asked her to remove the roof.

The landlord stated that the tenant owed \$400.00 rent from 2004 and that rather than give her compensation he held that amount against money owed by the tenant.

The tenant stated that throughout the tenancy the landlord had disturbed her by repeatedly coming to the property; that he would drive over on a quad when she had company and that during the last month of her tenancy people were at the property on an almost daily basis. The tenant stated that the landlord caused a loss of value of her tenancy. There were also some disagreements in relation to a barbed wire gate repaired by the landlord, on the edge of the property where a farmer rented pasture.

The landlord submitted that the agreement made between the tenant and the new property owners settled the matters which she is now claiming. The tenant had not been given permission to build the structures and she was free to remove items when she relocated. The landlord acknowledged that at times they did have a difficult relationship but that her claim for loss of quiet enjoyment has no basis.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There was no evidence before me that the landlord requested any construction work be completed, as part of the terms of the tenancy agreement. Further, the work completed on the back and front deck do not relate to any of the duties listed in the casual labour agreement that was appended to the tenancy agreement, which leads me to find that the dispute related to the costs for any construction are not within the jurisdiction of the Act, but form part of a disagreement over work performed.

In relation to the greenhouse, shed, fire pit, garden fence and perennials; I find that the tenant has not shown on the balance of probabilities, that she could not remove these items when she vacated the home. Once the tenancy had ended the tenant reached an agreement with the new property owners, who offered to purchase some items. It appears that a cheque for only a portion of the agreed upon amount was given to the tenant; however, this agreement made has no impact on the tenancy that had ended, and cannot be altered via dispute resolution with the landlord. The tenant did not dispute the submission that she did return to the property to remove perennials plants.

The tenant confirmed that she has kept the stove which she purchased; therefore she has not suffered a loss in relation to the stove and that portion of her claim is dismissed.

The tenant provided no evidence that supported her claim for a loss of quiet enjoyment. It may well be that the tenant and landlord had disagreements throughout the tenancy; however, the burden of proving a loss of quiet enjoyment falls to the tenant. In the absence of any evidence of a loss I find the claim is dismissed. Further; the tenant failed to mitigate the claim she was making that dated back over a 9 year period, as required by section 7 of the Act.

In relation to the claim for compensation as required by section 51 of the Act; the landlord agreed that he gave the tenant notice ending the tenancy as a result of a sale of the home. The written notice given to the tenant was not in the form required by the Act and did not reference the sale of the property; however, I find that the parties operated with the understanding that the vacancy was required as a result of a sale of the home; that the notice recognized the need to move, and that this is what occurred.

Therefore, as the tenant vacated the unit in response to the written notice and understanding by both parties that she must vacate due to the sale of the home, I find that she is entitled to compensation as provided by section 51 of the Act, in the sum equivalent to 1 month's rent; \$500.00. The tenant and landlord then created a new

tenancy, at another location, which has no bearing on compensation due to the tenant when the tenancy in question ended.

Conclusion

The claim related to the construction of decks is not within the jurisdiction of the Act.

I find that the tenant has established a monetary claim, in the amount of \$500.00, which is comprised of the equivalent of 1 month's rent as compensation for damage or loss.

Based on these determinations I grant the tenant a monetary Order for \$500.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

The balance of the tenant's application is dismissed.

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: March 06, 2012.

Residential Tenancy Branch