



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's applications: (filed June 5, 2012) CNC; OLC; AAT; RR
(filed June 11, 2012) CNR; MNDC; RR

Landlords' application: (filed June 8, 2012) OPC; MND; MNR; MNSD; MNDC; FF

Introduction

This Hearing was convened on June 27, 2012, to consider the Tenant's Application for Dispute Resolution filed June 5, 2012, seeking to cancel a Notice to End Tenancy for Cause, an Order that the Landlords comply with the Act, regulation or tenancy agreement; an Order allowing the Tenant access to the rental unit; and a rent reduction for repairs, services or facilities agreed upon but not provided.

During the course of the Hearing, it was determined that the Landlords had filed an Application on June 8, 2012, seeking an Order of Possession; a Monetary Order for unpaid rent, damages to the rental unit and compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit and pet damage deposit against their monetary award; and to recover the cost of the filing fee from the Tenant.

It was also determined that the Tenant had filed an additional Application on June 11, 2012, seeking to cancel a Notice to End Tenancy for Unpaid Rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and a rent reduction for repairs, services or facilities agreed upon but not provided.

The Landlord's Application and the Tenant's Application filed June 11, 2012, were not scheduled to be heard on June 27, 2012. Therefore, after dealing with some preliminary matters, the Hearing was adjourned to July 18, 2012, in order to hear all three Applications at the same time.

On July 18, 2012, the Landlord JP applied for an adjournment due to a personal family crisis. The Tenant did not oppose the adjournment. In addition, the Landlord stated that she was hopeful that the parties could come to a settlement agreement. Therefore, the matters were adjourned again until September 4, 2012.

At the reconvened Hearing on September 4, 2012, the parties indicated that they had not been able to reach an agreement to settle the issues.

The parties gave affirmed testimony at the Hearings.

It was determined that the parties exchanged their respective Notices of Hearing documents and documentary evidence in accordance with the provisions of the Act and the Rules of Procedure.

Preliminary Matters

On June 27, 2012, it was determined that the Tenant had moved out of the rental unit on or about June 20, 2012. Therefore the Tenant's application to cancel the two Notices to End Tenancy and the Landlords' application for an Order of Possession were withdrawn. As the tenancy has ended, and because the Tenant did not provide specifics regarding what portion of the Act, regulation or tenancy agreement he sought the Landlords' compliance, the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement was dismissed.

Issues to be Decided

1. Is the Tenant entitled to an Order allowing him access to the rental property to remove roofing shingles?
2. Is the Tenant entitled to rent abatement for loss of use of services and facilities?
3. Is the Tenant entitled to a monetary award for overpayment of rent and for work that he performed at the rental unit?
4. Are the Landlords entitled to a Monetary Order for unpaid rent and damages to the rental unit?
5. Are the Landlords entitled to retain the security and pet damage deposits in partial satisfaction of their monetary award?

Background and Evidence

This tenancy began in April, 2008. Rent at the beginning of the tenancy was \$2,200.00, due on the eighth day of each month. Utilities were not included. The parties did not provide a copy of this tenancy agreement in evidence.

On November 16, 2011, the parties entered into a new tenancy agreement and rent was reduced to \$1,800.00. A copy of that tenancy agreement was provided in evidence. The parties agreed that rent was reduced again to \$1,500.00 in April, 2012.

No Condition Inspection Report was completed at the beginning or the end of the tenancy.

The Tenant provided the following testimony:

The Tenant submitted that he has over paid rent in the amount of **\$14,000.00** because rent should have been \$1,500.00 from the outset of the tenancy due to numerous deficiencies at the rental property, including: broken appliances which the Tenant replaced; an impassable driveway; decaying railing on the deck, which collapsed causing a guest injury; broken furnace; moldy bathroom with nonfunctioning toilet; moldy carpet; delaminated floors in the bathroom and kitchen; and no access to the beach because the stairs collapsed. The Tenant testified that the male Landlord advised him several times that he would not be doing improvements to the rental property because the "house was a tear down". He stated that he was told, "you can do what you want". The Tenant stated that he removed the utility room to open up the living area and that the Landlords were pleased with the result.

The Tenant stated that the rental unit has been re-rented for \$1,500.00 per month after he did many renovations for which he was not compensated.

The Tenant stated that he advised the Landlords about deficiencies at the rental property but the Landlords did not do anything to effect repairs. He also seeks compensation for repairs that he made to the rental unit and property, as follows:

Repairs to driveway at female Landlord's request (3 loads of gravel)	\$1,400.00
Installing subfloor, tile and grout to kitchen and bathroom floor	\$700.00
Purchasing and installing new laminate floors	\$3,400.00
Removal of old carpeting and taking to dump	\$400.00
Clearing front yard and burning waste at female Landlord's request	\$1,200.00
TOTAL	\$7,600.00

At the Hearing on June 27, 2012, the Tenant agreed that there were roof shingles on the rental property that were his responsibility to remove and he stated that he would have them removed by July 1, 2012, if the Landlords would give him access to do so. He also stated that he had to finish the trim on the laminate floors; put in tiling by the fireplace; hang some doors; repair some drywall damage and touch up paint in the area.

At the Hearing on September 4, 2012, the Tenant acknowledged that he had not removed any of the shingles, although he had access to do so.

The female Landlord provided the following testimony:

The Landlord stated that, with the exception of laying new tile in the kitchen, the Tenant never approached them about the need for repairs at the rental unit or property and that he simply took it upon himself to do the repairs, which were not properly done. The Landlord testified that they were never approached to replace the appliances.

The Landlord testified that the Tenant caused the following damage to the rental unit:

- holes in the walls;
- damage to a door and missing closet doors;
- broken sidelight by entrance door;
- broken basement window;
- missing light fixtures;
- exposed electrical wires and unsafe wiring;
- faulty plumbing when the Tenant removed the utility room;
- furnace issues;
- old shingles in the yard;
- carpet ruined by Tenant's dog;
- removal of deck railing; and
- improperly installed laminate flooring.

The Landlord provided a cost breakdown to repair the Tenant's damage as follows:

Replace flooring and baseboards	\$940.00
Replace doors	\$1,000.00
Replace sidelight front door	\$500.00
Replace basement door window	\$600.00
Electrical fixtures	\$300.00
Unpaid water bill charges	\$1,264.00
Grout repairs	\$400.00
Trim on door	\$100.00
Re-carpet stairs	\$325.00
Furnace repair	\$700.00
Yard clean-up (fall 2011)	\$1,843.00
Yard clean-up (spring 2012)	\$4,000.00
Bobcat charges	\$402.00
Deck railing	\$1,390.00
TOTAL	\$15,264.00

The Landlord testified that the Tenant fell on hard financial times and started having difficulty paying rent. She stated that in August, 2011, when monthly rent was \$2,200.00, he was two months behind. She stated that the Tenant was able to pay

\$3,000.00 in late August, leaving the balance of \$1,400.00 outstanding. The Landlord stated that the Tenant promised to remove some shingles he had dumped on the property by winter, but he did not. The Landlord testified that she paid \$2,245.00 to have some of them removed, but that the remainder is still there. She stated that the Tenant agreed to repay the Landlord for the cost of disposing of those shingles. The Landlord provided receipts totaling **\$1,848.75** for dumping fees from October 3 – 5, 2011.

The Landlord stated that she felt sympathy for the Tenant because of the current economic conditions and that because of his work as a roofing contractor she knew winter would be financially tough. As a result, in November, 2011, the Landlords agreed to reduce the rent to \$1,800.00. The Landlord testified that the Tenant acknowledged that he owed the Landlords \$5,043.00 at the time he signed the new tenancy agreement and stated that he signed a notation with respect to that debt on the agreement.

The Landlord testified that the Tenant owes **\$6,750.00** in unpaid rent from August, 2011 to May, 2011, and that he did not pay rent for June, 2012 in the amount of **\$1,500.00**.

The Tenant gave the following reply:

The Tenant denied owing rent in the amount of \$8,250.00 to the Landlords. He stated that the actual amount of unpaid rent was \$4,000.00, but he made some cash payments to the male Landlord that were not reflected by the Landlords' accounting and worked off the remainder of the debt. He stated that the male Landlord did not provide receipts for rent paid in cash.

The Tenant acknowledged that the removal of the shingles was his responsibility, but stated that he cleared the Landlords' land in lieu of paying for the Bobcat and that he estimated the dumping fees for the 4 remaining loads of shingles was only \$1,200.00, and the cost of labour would be approximately \$800.00, for a total of \$2,000.00.

Analysis

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. In this case, both parties are claiming damage or loss and therefore the onus is on each party to prove their own claim.

To prove a loss and have the respondent pay for the loss requires the applicant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Is the Tenant entitled to an Order allowing him access to the rental property to remove roofing shingles?

I find that the Tenant has had ample time and opportunity to remove the roofing shingles from the rental property which have been on the property since at least August, 2011. The Tenant moved out of the rental unit on or about June 20, 2012. At the June 27th Hearing, the Tenant assured the Landlords that he would remove the shingles by July 1, 2012, but they were still on the Landlords' property on September 4, 2012. The Landlords expressed a desire to have them removed by someone else, and therefore I dismiss this portion of the Tenant's Application.

Is the Tenant entitled to rent abatement for loss of use of services and facilities?

Based on the testimony of both parties, I am satisfied that there were many deficiencies at the rental unit over the course of the tenancy. However, this is the Tenant's claim and the onus is on him to satisfy each one of the four requirements of the test as described above.

The Tenant provided no documentary evidence that he had advised the Landlords about the deficiencies in order that they could repair them.

The Tenant was non-specific about time frames with respect to this portion of his claim. For example, he stated that the Landlords' contractor removed a door and the toilet from one of the bathrooms, but he did not say when this occurred or when they were replaced.

If there are repairs required, a tenant's remedy is to write to the landlord and advise of the required repairs. In this fashion, there is clear evidence of what repairs are required and the date on which the landlord was advised of those repairs. If, after a reasonable amount of time, the repairs are not completed then the tenant's remedy is to file an Application for Dispute Resolution seeking an Order that repairs be made or seeking a rent reduction.

In this case, the Tenant did not file such an Application until he had been presented with a notice to end the tenancy. However, the Tenant testified that there were issues with respect to repairs from the beginning of the tenancy. I find that the Tenant has failed to satisfy part four of the test by providing sufficient proof that he took steps to minimize the damage being claimed by advising the Landlords in writing of the required repairs and requesting that they be fixed; or by filing a timely Application for Dispute Resolution.

The Tenant did not provide any documentary evidence to support the amount of his claim (for example a receipt for the cost of the furnace motor).

For the reasons provided above, I find that the Tenant has not provided sufficient evidence to prove this portion of his claim and it is dismissed.

Is the Tenant entitled to a monetary award for overpayment of rent and for work that he performed at the rental unit?

The Tenant did not dispute that he signed a tenancy agreement in April, 2008, setting the monthly rent at \$2,200.00. The Tenant had no Order from a Dispute Resolution Officer reducing his monthly rent. The Landlord disputed that the parties had an agreement that the Tenant could “work off” the rent, with the exception of tiling the kitchen floor and doing some yard work. The Tenant did not provide documentary evidence of any such agreement between the parties. Therefore I find that the Tenant has failed to provide sufficient evidence to support this portion of his claim and it is dismissed.

Are the Landlords entitled to a Monetary Order for unpaid rent and damages to the rental unit?

Sections 23 and 35 of the Act require a landlord to perform a Condition Inspection at the beginning and the end of a tenancy and to provide the tenant with a copy of the Inspection Report. The Landlord did not comply with Sections 23 and 35 of the Act. Section 21 of the Residential Tenancy Regulation provides that a Condition Inspection Report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord or tenant has a preponderance of evidence to the contrary.

I find, without the Condition Inspection Reports or evidence that the Tenant caused damage to the rental unit as alleged, the Landlords have failed to prove part one and two of the test for damages. I find that the Landlords also failed to prove part three of the test with respect to some of their claim. For example, they provided an estimate for

some of repairs, but no written estimate for the cost of removing the Tenant's garbage from the rental property.

With respect to the Landlords' claim for the cost of disposing of some of the Tenants' shingles, I find that the Landlord has provided sufficient evidence to support this claim in the amount of **\$1,848.75**.

With respect to the water bill, the Landlord provided a statement dated June 1, 2012, indicating an outstanding balance of \$264.51 and a computer printout of bills and payments from January 13, 2010 to March 3, 2012. The Landlords indicated on the printout that they paid \$702.21 outstanding that was "added to my property tax bill". The Tenant did not deny that the water bill was his responsibility to pay and therefore I allow this portion of the Landlords' claim in the amount of **\$966.72** (\$264.51 + \$702.21).

The Tenant disputed the amount the Landlords claim he owes for rent. The Landlords provided copies of some, but not all, rent receipts for the period of time they claim the Tenant was in arrears. Therefore, I find that they have not proven part one of the test as outlined above.

However, the Tenant agreed that he owed **\$4,000.00** in unpaid rent and that the cost of removing and dumping the remainder of his garbage at the rental unit would be **\$2,000.00**.

Therefore, I allow this portion of the Landlords' claim in the total amount of **\$8,815.47**, calculated as follows:

Cost of disposed of part of the Tenant's garbage	\$1,848.75
Unpaid water bill	\$966.72
Unpaid rent	\$4,000.00
Cost of disposing of remainder of Tenant's garbage	<u>\$2,000.00</u>
TOTAL monetary award	\$8,815.47

Are the Landlords entitled to retain the security and pet damage deposits in partial satisfaction of their monetary award?

The Landlords provided insufficient evidence with respect to the amount of the security and pet damage deposit that the Tenant paid in 2008. Therefore, I cannot set it off against the Landlords' monetary award. The parties are at liberty to set the deposits off against the Landlords' Monetary Order, pursuant to the provisions of Section 72 of the Act.

I order that the Landlords bear the cost of filing their Application.

Conclusion

The Tenant's application is **dismissed without leave to reapply**.

I hereby provide the Landlords a Monetary Order in the amount of **\$8,815.47** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

Pursuant to the provisions of Section 72 of the Act, the security deposit, pet damage deposit and interest accrued thereon may be applied towards partial satisfaction of the Landlords' monetary award.

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: September 11, 2012.

Residential Tenancy Branch