



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC ERP RP PSF RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to obtain Orders to have the Landlords make emergency repairs, make repairs to the unit, site or property, provide services or facilities required by law, and to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

Issue(s) to be Decided

1. Should the Tenants be granted a Monetary Order?
2. Has this Tenancy ended?

Background and Evidence

The Tenants had submitted documentary evidence in support of their claim which included, among other things, copies of: their tenancy agreement, and addendum; their written statement, an Order of Possession granted to the Landlord September 7, 2012, and a Monetary Order issued to the Landlord September 7, 2012.

The Tenant argued that they had entered into a verbal agreement with the Landlords whereby they could have fifteen days of free rent and \$100.00 per month reduction for future rent if they provided the labour to conduct repairs to the plumbing, the windows, and locks on the doors and the Landlords would provide the materials. They are of the opinion that they are entitled to compensation because the Landlords failed to provide the supplies for the repairs resulting in them living in unsuitable conditions.

The Landlords denied entering into a verbal agreement; rather their agreement was in writing. They noted that the written agreement was the tenancy agreement addendum provided in the Tenants' evidence. They pointed out that the Tenants were given possession of the unit for free from March 21 – 31, 2012 and rent began to be payable as of April 1, 2012 in the amount of \$1,100.00 instead of \$1,200.00 as advertised. The

\$1,100.00 as noted on the tenancy agreement represents the reduced rent agreed upon in the addendum. The start date of April 1, 2012 represents the date the Tenants were to begin paying rent even though they had full access of the unit from March 21, 2012.

The Landlords advised that they served the Order of Possession upon the Tenants on September 11, 2012 when it was posted to the Tenants' door. They stated the Tenants were aware of the Order and that they made this application after they received the Order which caused the Landlords to think they had to attend this hearing before they could enforce the Order.

I informed the parties that because this tenancy ended by issuance of the September 7, 2012 Decision and Orders, I declined to hear the remaining issues listed on the Tenants' application as they no longer apply as the tenancy is over.

The Tenant confirmed that full rent has not been paid each month and argued that partial payments were made therefore I should grant her leave to reargue the September 7, 2012 Decision and Orders.

It was evident during the hearing that neither party was aware of their rights or obligations as provided under the *Residential Tenancy Act*. It was also evident that neither party was aware of how Orders of Possession or Monetary Orders were enforced. As a result I informed each party that they were at liberty to seek guidance through the *Residential Tenancy Branch* or from an advocate in relation to these matters.

Analysis

When a party makes a claim for compensation for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy agreement,
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.

In this case the Tenant argued that she was entitled to compensation because the Landlord failed to uphold their verbal agreement to provide supplies and reduced rent for repairs. The Landlords deny entering into a verbal agreement and argued they complied with the written agreement that was the tenancy agreement addendum signed and agreed to by both parties.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove they suffered a loss during the course of the tenancy due to the Landlord's breach of an alleged verbal agreement. The only evidence before me that there was a verbal agreement was disputed by the Landlord and I find the disputed verbal testimony insufficient to meet the Tenants' burden of proof. Furthermore, the Tenants' own evidence supports the Landlords' testimony that they had a written agreement which the Landlord upheld.

Based on the aforementioned, I find the Tenants have provided insufficient evidence to meet the test for damage or loss, as listed above, and I dismiss their monetary claim, without leave to reapply.

The evidence supports that this tenancy ended and an Order of Possession and Monetary Order were issued to the Landlords on September 7, 2012. Accordingly, I declined to hear the remaining items on the Tenants' claim as they pertain to an ongoing tenancy.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Tenants' claim, 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: October 17, 2012.

Residential Tenancy Branch