



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC LRE AAT LAT FF O

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for money owed of compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, to allow access to (or from) the unit or site for the tenant or the tenant's guests, to authorize the tenant to change the locks to the rental unit, to recover the filing fee, and "other" although details of "other" are not clearly specified in the application details.

The tenant and the landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The landlords confirmed they received the evidence package from the tenant and had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary Matter

The issue of jurisdiction was considered as the landlords position is that the *Act* does not apply as the rental unit is at a motel. As the parties agreed that the tenant has been living at the motel for over one year and has been paying rent at the rental unit during that time, **I find** the *Act* does apply and that I have jurisdiction to hear this dispute as a result.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*?
- Should the landlord be ordered to comply with the *Act*?
- Should the tenant be authorized to change the locks under the *Act*?

Background and Evidence

The parties agree that the tenant moved into the rental unit on September 1, 2011. The parties dispute the amount of rent being paid. The landlords testified that monthly rent is \$650.00 per month. The tenant testified that rent is \$625.00 per month. Both parties agree that rent is due on the first day of each month. The tenant did not pay a security deposit at the start of the tenancy.

The parties dispute the existence of a tenancy agreement. The tenant claims she signed an agreement. The landlords deny that a tenancy agreement was ever signed.

The tenant has claimed \$25,000.00 but did not specify how that amount was reached in her application. During the hearing, the tenant stated that her claim of \$25,000.00 consists of her loss of one year's wages.

The tenant alleged during the hearing, that someone has been entering her room, but is unsure who it is. According to the tenant, she suspects it is likely the local police entering her room. The tenant was unable to provide specific dates or details to support her claim, other than to state that she feels someone is "prostituting" her by redirecting calls to the tenant. The landlords responded to the tenants claim by stating that they are not authorized to give out her number to anyone without her permission. The landlords deny redirecting any calls to the tenant without her permission. The landlords also state that they enter the rental unit to replace linens, however, will only do so when the tenant is present.

The tenant also alleged that there have been attempts on her life by someone allegedly entering her rental unit and placing prescription or street drugs into her drink containers and lotion bottles. She stated that the lotions burn her skin and "feel like clay" so she took the containers to a food and health inspector for inspection. The tenant confirmed during the hearing that she has been advised by the food and health inspector to stop bringing in containers for inspection. The tenant was unable to provide specific dates, however, she stated "let's just say September 1st". The tenant later confirmed during the hearing that she could not recall a specific date when asked how she came up with September 1st as a specific date.

The tenant has requested permission to have the locks changed as she believes "someone must have the key" but is unsure who. The landlord responded by stating that the only people with a key are staff and that nobody else would have a key to the rental unit. The landlords stated that they do not wish to replace the rental unit lock as they would be forced to change the master key if they were to do that.

The landlord responded to the tenant's claim by stating that they tenant has never informed them of her concerns regarding unauthorized entry of her rental unit. The landlords testified that they have walked by the rental unit and have seen her door wide open when she was on the other side of the complex and suggested to the tenant that she could keep her door locked if she is concerned unauthorized entry into her unit.

The tenant did not submit witness testimony, or other corroborating evidence to support her application.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation 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.

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 *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

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.

Tenant's claim for \$25,000 for lost wages – The tenant failed to provide any evidence to support her claim. The tenant also failed to prove that the landlords have breached the *Act*, regulation or tenancy agreement in any way. Therefore, **I find** that the tenant has failed to meet the burden of proof for the test for damages or loss and **I dismiss** the tenant's claim without leave to reapply due to insufficient evidence.

Remainder of tenant's application – The tenant has requested that the landlords' comply with the *Act*, regulation or tenancy agreement, to suspend or limit the landlords' right to enter the rental unit, to allow access to or from the rental unit for the tenant or the tenant's guests, and to authorize the tenant to change the locks of the rental. The tenant has failed to provide any corroborating evidence to support her claims. At the very least, I would expect the tenant to have provided specific dates, details of occurrences, and witnesses or witness statements to support her claims. As the landlords have disputed the tenant's testimony, the vague allegations made by the tenant, and without any further evidence from the tenant, the tenant has not met the onus to prove her claim. Therefore, **I dismiss** the remainder of the tenant's application in full without leave to reapply.

As the tenant's application did not have merit, I **do not** grant the recovery of the filing fee.

The parties disputed the existence of a tenancy agreement. I have attached the standard terms of any tenancy agreement pursuant to section 13 of the *Act* for the benefit of both parties.

Conclusion

I dismiss the tenant's application in full without leave to reapply due to insufficient evidence.

I do not grant the tenant recovery of the filing fee.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 10, 2012

Residential Tenancy Branch

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

