



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord did not attend this hearing, although I waited until 9:46 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The female tenant (the tenant) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that she sent a copy of the tenants' dispute resolution hearing package to the landlord by registered mail on August 14, 2012. This package included a Notice of Hearing issued by the Residential Tenancy Branch (RTB) for the original hearing scheduled for October 25, 2012 at 11:00 a.m. The tenant provided the Canada Post Tracking Number to confirm this mailing to the landlord's mailing address.

The tenant testified that the Service BC Office that was forwarding her correspondence to the RTB erred in requesting a cancellation of the October 25, 2012 hearing. When she contacted the RTB after she could not connect with the October 25, 2012 hearing, the RTB confirmed that the October 25, 2012 had been mistakenly cancelled. As neither the tenants nor the landlord were responsible for this error, the RTB rescheduled the October 25, 2012 hearing for November 8, 2012 at 9:30 a.m. Under the circumstances, the RTB provided direct notice of the new hearing date and time to both the tenants and the landlord by telephone and by mail. I am satisfied that the landlord was served with notice of this rescheduled hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy?

Background and Evidence

The tenants provided oral and written evidence that they signed a Residential Tenancy Agreement (the Agreement) with the landlord for the rental of his manufactured home on September 19, 2010. According to the terms of their signed Agreement, this periodic tenancy was scheduled to commence on October 1, 2010. Monthly rent was set at

\$700.00, payable in advance on the first of each month. The tenant testified that they paid the landlord \$700.00 for their October 2010 rent when they signed this Agreement. The tenant provided oral and written evidence that the landlord retained the male tenant (her husband) to conduct repairs to the manufactured home prior to the formal commencement of the tenancy. She said that the landlord agreed to retain her husband to create a third bedroom in the manufactured home and build a wooden deck in lieu of requiring a security deposit payment for this tenancy. The tenants entered written evidence that they had been given permission by the landlord to start the move-in process anytime after September 1, 2010. She said that her husband worked on the rental unit six to eight hours per day from September 1, 2010 until September 12, 2010 when he suffered a serious injury to his finger with a skill saw doing this work for the landlord.

After the male tenant hurt his finger and was unable to continue the repairs, the tenant testified that the landlord continued to assure the tenants that the premises would be habitable by October 1, 2010. The tenants entered written evidence that by October 1, 2010, there was no stove, fridge or toilet and the landlord had also refused to install a telephone line to service this new rental unit. Although the tenants could not move into the rental unit due to the lack of amenities for a family of four, they could not remain in their existing rental accommodations because they had given their notice at that location and another family was scheduled to occupy it. The tenant testified that the tenants never did occupy the rental unit. However, by September 27, 2010 as the tenants were trying to move into the premises, the landlord decided that he would not let them occupy the rental unit. As the tenants had nowhere else to go, they still attempted to move into the rental unit. However, they could not do so when the landlord disconnected the hydro to the rental unit.

The tenants entered oral and written evidence that they were unable to find alternate accommodations on such short notice. They had to manage with their family of four by sleeping on friends' couches until November 1, 2010. During that time, the tenant testified that they incurred additional costs by eating restaurant and take-out food, and lost furniture and clothes because they had to leave these outdoors during cold conditions.

The tenants' application for a monetary award of \$1,207.55 was for the following items:

Item	Amount
Food Costs for October 2010	\$180.55
Gas Connection Costs	27.00
Lost or Damaged Furniture and Clothes	500.00
Unpaid Wages to Male Tenant (and Pain and Suffering due to Skill Saw Injury)	500.00
Total Monetary Award Requested	\$1,207.55

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a landlord who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

Based on the undisputed evidence of the tenants, I find that the tenants have demonstrated to the extent necessary that they have experienced losses arising out of this tenancy as a result of the landlord's failure to comply with the terms of the Agreement he signed on September 19, 2010. The landlord's return of the tenants' October 2010 rent cheque and his failure to provide the tenants with services and facilities necessary for them to occupy the rental unit leads me to conclude that the landlord contravened the *Act* and the Agreement.

In this case, I find that the tenants have demonstrated that they incurred extra food costs between late September 2010 and November 1, 2010 that they would not have incurred had the landlord complied with the terms of the Agreement. I also find that the tenants' claim for food costs of \$180.55 for this period of time is by no means an excessive claim for food for a family of four. I allow the tenants' application for a monetary award of \$180.55 for losses they incurred for food they had to purchase outside their home during this period.

After reviewing the tenants' claim for their connection charge with Fortis BC, I find that the tenants are entitled to recover the \$27.00 gas connection charge they incurred from the landlord. In making this determination, I find that the tenants would not have incurred this cost had the landlord not contravened the Agreement and the *Act*.

I accept that the tenants likely incurred losses resulting from their lack of a place to store their furniture, clothes and other belongings during October 2010. However, the lack of detail regarding these losses and their failure to provide photos, descriptions, an inventory, receipts, bills or accurate estimates leaves me with little basis for estimating the extent of their losses. Without these details, I find that the tenants are entitled to a monetary award of \$50.00, an admittedly nominal amount for the losses to their personal belongings and furniture they encountered as a result of the landlord's contravention of the Agreement and the *Act*.

I dismiss without leave to reapply the tenants' application for a monetary award for unpaid wages, and for pain and suffering incurred while the male tenant was working for the landlord. Based on the tenant's oral and written evidence, the work performed by the male tenant pre-dated the September 19, 2010 signing of the Agreement. The Agreement makes no mention of any addendum or terms relating to the landlord's forgiveness of a security deposit in exchange for labour conducted by the male tenant on the rental unit. There was no Residential Tenancy Agreement in place during the period from September 1, 2010 and September 12, 2010 when the male tenant injured his finger. I find that there is insufficient evidence to find that this portion of the tenants' claim for a monetary award is covered under the *Act*.

Any claim that the male tenant might have for this period may be between a worker and an employer or a contractor and a client. These types of claims do not fall within the *Act*. I also note that any claim for pain and suffering for an injury sustained while in a workplace setting may fall within the *Workers' Compensation Act*, again beyond my jurisdiction under the *Residential Tenancy Act*.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to recover the specific losses set out below that arose as a result of the landlord's actions:

Item	Amount
Losses as a Result of Additional Food Costs from September 27, 2010 until November 1, 2010	\$180.55
Gas Connection Costs	27.00
Lost or Damaged Furniture and Clothes	50.00
Total Monetary Order	\$257.55

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: November 08, 2012

Residential Tenancy Branch

