



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: MNR, MND, MNSD, FF

Tenant's application: RPP, MNDC, MNSD, FF

Introduction

This Hearing was convened to consider cross applications. On November 14, 2012, the Landlord filed an Application for Dispute Resolution seeking an Order of Possession and monetary award for unpaid rent; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

On November 14, 2012, the Tenant filed an Application for Dispute Resolution seeking more time to file an application to cancel a Notice to End Tenancy; to cancel the Notice to End Tenancy for Unpaid Rent issued November 5, 2012; for Orders that the Landlord return his personal property and to suspend or set conditions on the Landlord's right to enter the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearings. An Interim Decision was provided on December 17, 2012, which should be read in conjunction with this Decision. On December 14, 2012, it was determined that the Tenant moved out of the rental unit on November 17, 2012, and therefore the requests for an Order of Possession and the application for more time to cancel the Notice to End Tenancy; and for an Order suspending or placing restrictions on the Landlord's right to enter the rental unit were all dismissed. The other matters were adjourned in order to allow both parties to amend their applications and orders were made with respect to time frames for the parties to amend their applications and to serve each other with their amended applications.

Preliminary Matters

At the outset of the reconvened Hearing, the Landlord's agent stated that the Interim Decision of December 17, 2012, had incorrectly named the Landlord/owner and had referred to the Landlord incorrectly as "she and her" rather than "he and him". Due to a language issue and the agitated nature of the Landlord's agent, there was a considerable amount of confusion at the Hearing on December 17, 2012, with respect to the names, and the spelling of the names, of the Landlord and his agent and interpreter.

I had to ask repeatedly for the Landlord's party to introduce themselves and set out their relationships to each other. I explained that I had recorded the parties as they had been introduced on December 14, 2012, but that I would use the correct pronoun for the Landlord during this Decision.

The Landlord's agent BS (herein referred to as "the Agent"), testified that the Landlord amended his Application for Dispute Resolution on December 31, 2012, and served the Tenant with his amended application and documentary evidence by registered mail sent February 12, 2013. I asked the Landlord why he did not serve the Tenant within 3 days of filing the amendment, pursuant to my Order of December 17, 2012. The Agent replied that they did not understand my Order and went to the Residential Tenancy Branch. The Agent stated that she showed the Order to an Information Officer, who told them that they didn't have to serve the Tenant until 3 days before the reconvened Hearing.

The Tenant testified that he filed his amended Application on December 18, 2012, and that he mailed a copy to the Landlord on December 18, 2012. The Agent acknowledged that the Landlord received the Tenant's amended Application "two weeks ago". The Tenant stated that he did not file any additional documentary evidence as he was relying solely on the documentary evidence that was with his original Application.

The Tenant stated that, notwithstanding that he did not receive the Landlord's documentary evidence within the time frame provided in my December 17th Order, he did not want an adjournment and wished to proceed with the matter.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent and damages to the rental unit?
2. Is the Tenant entitled to an Order that the Landlord return his personal property?
3. Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?
4. Is the Tenant entitled to return of the security deposit?

Background and Evidence

The rental unit is a suite in the Landlord's house. Monthly rent was \$1,050.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 at the beginning of the tenancy. There is no written tenancy agreement with respect to this tenancy. No Condition Inspection Report was completed at the beginning or the end of the tenancy.

The Agent testified that the Tenant moved into the rental unit on May 29, 2012, and that he has never paid any rent to the Landlord. The Landlord seeks a monetary award of **\$7,350.00** (\$1,050.00 x 7 months) in unpaid rent.

When asked why the Landlord took so long to issue a Notice to End Tenancy for Unpaid Rent, he replied that the Tenant would get mad whenever he was asked for rent.

The Tenant testified that that rent was \$1,000.00 but that he paid an additional \$50.00 per month for the use of the garage. The Tenant denied that he owed any rent to the Landlord. He stated that he paid rent for every month, including rent for November, 2012. The Tenant testified that he paid rent in cash, but was never provided receipts. The Tenant provided copies of bank statements in evidence.

The Agent testified that the Tenant used the garage and the side storage shed at the rental property without the Landlord's permission. The Landlord seeks a monetary award of **\$2,100.00** (\$300.00 x 7 months) for the use of the garage and **\$770.00** (\$110.00 x 7 months) for the use of the storage shed.

The Tenant denied that he used the garage or storage shed without the Landlord's permission. He stated that he paid \$50.00 per month for the use of the garage.

The Agent testified that everything in the rental unit was brand new when the Tenant moved in. The Agent, who is the Landlord's daughter, stated that her grandmother was originally going to move into the rental unit, but she could not use the stairs so they decided to rent out the upper suite. The Agent stated that the Tenant and his friends ruined the rental unit and also either broke or stole a number of items that the Landlord had stored in the garage and storage shed. The Landlord provided a three page list of missing and broken items in evidence. The Agent stated that the Landlord went to the Home Depot to get current prices for all of the ruined or stolen items. There is no final tally on the Landlord's list, but the Landlord's amended Application indicates that the Landlord seeks **total compensation in the amount of \$25,000.00**. The Landlord provided photographs of the rental unit in evidence.

The Tenant stated that the Landlord's house was originally only "one storey" and that the Landlord "made it into a two storey house". He stated that he was concerned because the water and heat was not working properly in the rental unit. He stated that there was no proper kitchen and that the kitchen was made "in a closet out of moveable boxes".

The Tenant testified that a municipal authority came to take photographs of the rental unit on November 2, 2012, and told the Tenant that the rental unit was not livable. The

Tenant stated that the photographs show that the Tenant did not damage any of the rental unit, but that he did not get copies of the photographs from the municipal authority.

The Agent stated that the Tenant and his friends “ruined the house after the City left”.

The Tenant stated that the Landlord called the police, who were there on the day that the Tenant moved out and that neither the Tenant nor his friends broke anything.

The Tenant seeks return of the security deposit in the amount of **\$500.00**.

The Tenant testified that he paid the cable bill for the whole house and that the Landlord agreed to reimburse him for half of that cost. He stated that he paid \$550.00 for five months of cable, but the Landlord did not pay any of his part. The Tenant seeks a monetary award in the amount of **\$275.00** (1/2 of \$550.00).

The Tenant testified that he paid all of November’s rent to the Landlord and that he was forced to also pay full rent for his new accommodation in the amount of **\$1,250.00**. The Tenant stated that he was harassed into leaving the rental unit even though he had paid rent. The Tenant seeks to recover this cost from the Landlord, as well as the cost of hiring a moving truck in the amount of **\$76.00**, and the cost of lunch and dinner for 8 people, in the amount of **\$200.00**.

The Tenant testified that laundry was included in the rent, but the Landlord withdrew the laundry facilities for the last 4 months of the tenancy. The Tenant seeks compensation at \$15.00 per week for the cost of doing laundry elsewhere, in the amount of **\$240.00**.

The Agent stated that the Tenant always had use of the washer and dryer, but that he damaged the dryer by putting fire crackers in the dryer and setting them alight. The Agent stated that the Tenant stole the washer and dryer when he moved out.

The Tenant stated that the Landlord broke the glass on the Tenant’s table and stole the dining table legs. He stated that the dining table cost **\$2,700.00** two and one half years ago, and he seeks a monetary award in that amount for this portion of his claim. He also seeks a monetary award of **\$50.00** because the Landlord “stole one of my son’s Nike slippers”.

The Agent denied that the Landlord broke the Tenant’s table, or stole the dining table legs or the Tenant’s son’s slipper.

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 on the civil standard, the balance of probabilities.

Is the Landlord entitled to a Monetary Order for unpaid rent for June to November, 2012 and for damages to the rental unit?

I have carefully considered the testimony of both of the parties in an effort to establish credibility in relation to the disputed facts regarding the payment of rent. I favour the evidence of the Tenant over the Landlord for the following reasons:

- The Agent stated that the Landlord went into the Residential Tenancy Branch (the “Branch”) to speak to an Information Officer with respect to clarifying my December 17th Order. The Branch’s electronic filing system indicates that the Branch received the Landlord’s amended application by fax on December 24, 2012. There is no indication on the file that the Landlord or his agent attended in person at the Branch or spoke to an Information Officer about clarifying my Order. It is practice for such information to be indicated in the electronic filing system. Even if I accept that the Landlord and his Agent went to the Branch and spoke to an Information Officer about my December 17th Order, it stretches credibility that an Information Officer would tell a party to ignore an arbitrator’s Order. Furthermore, there is no basis in the Act, regulations or the Branch Rules of Procedure that provides for service of documents “3 days before the Hearing”.
- The Tenant provided bank statements, which indicate \$1,050.00 was withdrawn on July 24th, August 29th, September 28th and October 30th, 2012. On June 29th, 2012, \$1,150.00 was withdrawn. I find it probable that these sums were withdrawn to pay rent to the Landlord.

For the reasons stated above, I find that the Tenant does not owe any rent for the months of June to November, 2012, inclusive.

The Landlord did not prepare a written tenancy agreement, contrary to the provisions of Section 13 of the Act. The Tenant stated that he paid \$50.00 a month for use of the garage. He disputed the Landlord’s claim with respect to using the garage and storage shed without the Landlord’s permission. I find that the Landlord has not provided sufficient evidence to support this portion of his claim.

The Tenant denied damaging the rental unit. The Landlord did not complete a condition inspection at the beginning or the end of the tenancy, contrary to Sections 23 and 35 of the Act. A condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless there is a preponderance of evidence to the contrary. The Agent stated that the municipal employee could verify that the rental unit was in good condition on November 2, 2012. However, there were no independent witnesses called to corroborate the Landlord's version of events. In this case, I find that the Landlord did not provide sufficient evidence that the Tenant damaged the rental unit, or that he stole the items as alleged by the Landlord.

Therefore, I dismissed the Landlord's claim in its entirety without leave to reapply.

Is the Tenant entitled to an Order that the Landlord return his personal property?

I find that the Tenant provided insufficient documentary evidence to support this portion of his claim. No documentary evidence was provided with respect to the value of the Niki slippers or the table legs. This portion of the Tenant's application is dismissed without leave to reapply.

Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

The Tenant seeks compensation for his moving costs. The Tenant provided a photograph of the Landlord's car parked directly behind the Tenant's car, effectively blocking the Tenant from moving his car. He also provided a photograph of a sink with taps turned on, but with a very slow stream of water coming from the tap. I find that these photographs are insufficient evidence to prove the Tenant's allegation that the Landlord harassed him into moving. The Tenant did not call any independent witnesses to corroborate this part of his claim. This portion of the Tenant's application is dismissed without leave to reapply.

The Tenant seeks to recover the Landlord's portion of the cable bill. The Tenant did not provide copies of the cable bills in evidence and therefore, I find he provided insufficient evidence of the amount the Tenant paid for cable over the period of the tenancy. This portion of the Tenant's application is dismissed without leave to reapply.

The Tenant seeks a monetary award for his broken table top. No documentary evidence was provided with respect to the value of the table; or to support the Tenant's allegation that it was broken; or that it was broken by the Landlord. The Tenant provided no photographs of the broken table top, or documentary evidence indicating

the value of a similar table. This portion of the Tenant's application is dismissed without leave to reapply.

The Tenant seeks compensation for having to do his laundry elsewhere for four months. I accept the Tenant's testimony that he did not have access to laundry for four months and that laundry facilities were part of the rent. Section 27 of the Act provides that a landlord may terminate or restrict a non-essential service of facility if the landlord provides 30 days written notice of termination or restriction and reduces rent in an amount that is equivalent to the reduction in the value of the tenancy agreement. In this case, I find the Tenant's claim in the amount of \$15.00 a week is reasonable and allow this portion of his claim in the amount of **\$240.00**.

Is the Tenant entitled to return of the security deposit?

The tenancy is over, the Landlord's application for a monetary order has been dismissed, and the Landlord's right to claim against the security deposit has been extinguished under Sections 24 and 36 of the Act. Therefore, I find that the Tenant is entitled to return of the security deposit in the amount of **\$500.00**.

The Tenant has been partially successful in his Application for Dispute Resolution and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

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

The Tenant has established a monetary award in the total amount of **\$790.00**. I hereby provide the Tenant with a Monetary Order in the amount of **\$790.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order 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: March 12, 2013

Residential Tenancy Branch

