



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 11, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to Order the Landlord to comply with the Act and make emergency repairs; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant 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. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to be awarded a Monetary Order?
2. Has the Tenant proven that the rental unit requires emergency repairs?

Background and Evidence

The parties agreed they entered into a verbal tenancy agreement that began on May 17, 2013. Rent is payable on the first of each month in the amount of \$800.00 and on May 17, 2013, the Tenants paid \$412.00 as May 2013 rent plus \$400.00 as the security deposit. Their rent includes utilities but does not include cable.

The Tenant testified that on October 10, 2013, the Landlord assaulted him when they were arguing about the Tenant moving a white cabinet out of the covered patio area and over to beside the garbage cans and fence. He stated that he called the police and

requested that assault charges be laid against the Landlord. The police would not lay the charges against the Landlord because they said it was too dark and there were no witnesses to the event.

The Tenants submitted that they are seeking \$3,500.00 in compensation for having to move so soon and for having to incur utility hook up charges and moving costs. They stated they were served a 1 Month Notice on October 11, 2013 and are not disputing that Notice. They have secured another place and will moving out of this unit by November 30, 2013. Their new rent is \$900.00 per month and includes all utilities and cable. They have had to pay \$450.00 security deposit, \$150.00 pet deposit, and \$900.00 for December rent which they wish to be reimbursed for. They are also seeking compensation for three days lost wages as a result of this incident at \$40.00 per hour. They would also like compensation for their moving costs but do not know the amount as of yet.

The Landlord confirmed there was an incident which occurred on October 10, 2013 which occurred after he approached to the Tenant to discuss why his cabinet was laying outside broken. He indicated the cabinet was originally stored in the enclosed shed under the deck and he came home and saw it outside beside by the garbage bins. He took it apart and laid it up against the wall and went inside for dinner. When he returned he saw it thrown on the grown so he approached the Tenant. He denied assaulting the Tenant. He stated the police advised him to serve the Tenant with an eviction notice which he did the next day.

In closing the Landlord had nothing further to add, other than saying it will be resolved when the Tenants move out. The Tenants argued the cabinet was always outside of the shed under the corner of the deck and was still exposed to the elements.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

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 the Landlord breached the Act. Accordingly, the only evidence before me was verbal testimony which the Landlord disputed. Accordingly, I find the disputed verbal testimony insufficient to meet the Tenant's burden of proof. Furthermore, there is no documentary evidence to prove the actual amounts being claimed. Therefore, I find there to be insufficient evidence to meet the test for damage or loss, as listed above, and I dismiss the Tenant's application, without leave to reapply.

The Tenant has not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenant's 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: November 28, 2013

Residential Tenancy Branch

