



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNDC, FF

Landlord: MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross-applications by the parties.

The tenant filed on March 07, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for loss under the Act - Section 67
2. An Order to recover the filing fee for this application - Section 72.

The landlord filed on June 11, 2014 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for Unpaid rent – section 67
3. To keep the security deposit – Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss their disputes, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that despite all their submission of evidence only *relevant* evidence would be considered in the Decision and each party bears the burden of proving their respective claims.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began May 01, 2011 and ended November 30, 2012. The parties of this tenancy have been the subject of 2 previous hearing Decisions dated March 07, 2013 of a hearing conducted on the same date (805113 and 802926), and November 04, 2013 of a hearing conducted October 31, 2013 (810632) – each submitted into evidence.

Tenant's application

The tenant seeks to recover moving costs from the landlord pursuant to a 2 Month Notice to End for Landlord's Use of Property, because a previous Decision purportedly found that the landlord's 2 Month Notice was not given in *Good Faith*. The tenant seeks \$1851.43 for the amount they paid for movers, as well as the cost of the mover's lunch. The tenant provided receipts for both.

Landlord's application

The landlord seeks *loss of revenue* for December 2012 in the amount of \$1250.00, originally claimed and decided in the March 07, 2013 Decision; and, to recover the *compensation awarded to the tenant* in the November 04, 2013 Decision in the amount of \$2500.00. The landlord also seeks compensation for *damages* originally claimed and decided in the March 07, 2013 Decision. The landlord further seeks to recover the compensation awarded the tenant for the *security deposit* originally decided in the March 07, 2013 Decision. In addition, the landlord seeks to recover 2 previous filing fees in the sum of \$100.00. The landlord acknowledged providing the same evidence they provided in previous hearings.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.rto.gov.bc.ca.

The onus is on the respective parties to prove their claims, on balance of probabilities. Under the *Act*, a party claiming a loss bears the burden of proof. On preponderance of all the evidence submitted, I find as follows.

Landlord's claim

On review of the evidence – in particular the Director's Decisions of past dispute resolution hearings for this tenancy - I find that all of the landlord's claims of this matter were previously considered and decided by an Arbitrator, as referenced above. I find that the landlord's current claims on application are *res judicata*: that is, all of the landlord's claims have already been decided in the appropriate forum and this operates

as an absolute bar to a subsequent action involving the same claim, demand, or cause of action / the style of cause. As a result, I **dismiss** the landlord's application in its entirety, without leave to reapply.

Tenant's claim

The tenant argues that a previous Decision of the Director dated November 04, 2013, found the landlord's Notice to End for Landlord's Use was not given in *good faith* – causing a loss for the tenant.

It must be noted that Section 49 of the Act states that a landlord may give a Notice to End the tenancy for landlord's use if the landlord has a *good faith intention* for ending the tenancy for a purpose referred to in Section 49(3)(4)(5) or (6) of the Act. A tenant may dispute the landlord's Notice to End or *good faith intention* for giving the Notice by making an application for dispute resolution within 15 days after the date the tenant receives the Notice. In this matter the tenant did not dispute the Notice alleging an ulterior motive for giving the Notice – they accepted and acted on the landlord's Notice, by vacating – and were compensated as prescribed by the Act. I find that in the November 04, 2013 Decision the landlord's *good faith intention* for giving the Notice to End for Landlord's Use was, neither, considered, relevant, or at issue in determining the tenant's application for the Section 51 compensation. The Decision does not address the validity of landlord's intentions for giving the Notice, nor is *good faith* referenced in the Decision. The argument respecting *good faith* is only applicable when and if a tenant disputes the landlord's Notice to End as having been given for an ulterior motive versus a *good faith intention*.

I find that the tenant was well aware of their moving costs for the March 07, and October 31, 2013 hearings but chose not to advance this claim, although available to them to do so. It is a well-established principle in law as part of the *res judicata* doctrine that a party may not divide a claim, or cause of action into separate parts and bring separate actions upon it, either in the same court, or in separate courts or jurisdictions. This is referred to as *claim splitting*. The rule against splitting causes of action requires parties / litigants to bring all their claims arising out of the same transactional cluster of facts in the same action. It is an equitable rule and a subsidiary of the doctrine of *res judicata*. Like *res judicata*, the rule against splitting causes of action rests upon the principles that cases should not be tried piecemeal and that litigation should end once the rights of the parties have been determined. In essence, the rule bars repetitious applications involving the same cause of action. Plaintiffs must therefore bring all such related claims that have already accrued in the same application, or lose them. As an alternate

example, in a personal injury action arising from a motor vehicle collision, parties must bring their claims for both bodily injury and property damage in the same action.

Moreover, the evidence is that the tenant was compensated \$2500.00 upon satisfying that the landlord did not eventually use the rental unit for the stated purpose for ending the tenancy – for which the Act prescribed the amount of compensation. The amount granted the tenant was not a penalty to punish the landlord. Rather, it is, as the Act states: **Tenant's Compensation: Section 49 Notice** – and **it is** the compensation for loss owed a tenant associated to a 2 Month Notice to End. In total, the tenant has been compensated \$3750.00 resulting from the landlord's Notice. The Act does not operate to further compensate a tenant respecting the landlord's Notice. In this matter, I find the tenant has presented a loss in the claimed amount of \$1851.43, and has received compensation to date of \$3750.00. Therefore, I find the tenant has been compensated for their claimed loss. As a result of **all** the above, **I dismiss** the tenant's application in its entirety, without leave to reapply.

Conclusion

The respective applications of both parties are **dismissed**, without leave to reapply.

This Decision is final and binding on both parties.

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: June 25, 2014

Residential Tenancy Branch

