



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC,

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Although the landlord did not comply with the Residential Tenancy Branch Rules of Procedures as the landlord evidence submitted late. The tenant confirmed receipt of the evidence and was ready to proceed.

I refer only to the relevant facts and issues in this decision.

Preliminary issue

On March 18, 2014, a hearing was held and the Arbitrator found the rental unit was uninhabitable for the month of October 2013. The tenants were granted a monetary order for the return of rent for October 2013 and were further granted the return of double the security deposit.

On June 4, 2014, the landlord filed an Application for Review Consideration. An Arbitrator reviewed the application and determined the landlord failed to prove they filed their application within the statutory time limit permitted under the Act. The landlord's application for review consideration was dismissed and the original decision and orders were confirmed.

At the outset of the hearing the landlord was informed the issue of loss of rent and the security deposit would not be considered at today's hearing, as the Arbitrator on March 18, 2014, had found the rental unit uninhabitable and the rent and security deposit was ordered to be returned to the tenants. I find that due to the legal principal of Res

judicata, I cannot grant the landlord's request to hear the issue of loss of rent and the security deposit as this matter was already heard and decided upon.

Procedural matter

Prior to the conclusion of the hearing the landlord became argumentative and was attempting to argue about a matter that was before the Provincial Court of British Columbia (Small Claims Division), which I decline to hear any evidence relating to that matter as it is not relevant to the case before me.

The landlord then exited the hearing. However, the landlord had provided a significant amount of testimony, more than enough to make a decision in the case before me.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on August 21, 2013. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenants. The tenancy ended on October 18, 2013.

The landlord confirmed the only issues to be dealt with at the hearing are as follows:

a.	Unpaid utilities	\$ 83.85
b.	Ficus Tree and microwave oven	\$ 300.00
c.	Garbage removal	\$ 100.00
	Total claimed	\$ 483.85

Unpaid utilities

At the outset of the hearing the tenant agreed they owed \$83.85 for utilities, although they did try to pay the outstanding amount.

Ficus Tree and microwave oven

The landlord testified that she was moving from the rental premises and decided to rent the premises. The landlord stated that she was unable to fit her 15 year old ficus tree into the car and she asked the tenant if it was okay for her to leave the tree behind. The landlord stated when the tenants vacated the premises the tree was not left behind. The landlord seeks to recover the amount of \$150.00.

The landlord testified that when she vacated the premises she also left behind her microwave oven for the convenience of the tenants. The landlord stated that microwave

was taken by the tenants at the end of the tenancy and it was about three years old. The landlord seeks to recover the amount of \$150.00.

The tenant testified that before the landlord moved from the premises she had a garage sale and the ficus tree was for sale for the amount of \$50.00, however, the tree did not sell. The tenant stated the landlord was unable to take the tree when she vacated the premises and the landlord gave it to her to keep. The tenant stated the tree was not healthy and she disposed of the tree shortly after that.

The tenant testified that because the landlord moved from the rental unit, the landlord left behind a large amount of garbage, which included couches. The tenant stated the landlord left an old microwave behind which was crusted with food and not useable. The tenant stated she took the microwave and couches to the dump.

Garbage removal

The landlord testified that when she moved from the premises she left garbage behind. The landlord stated she reduced the tenants rent by \$100.00 as there was an agreement for the tenant to remove and dispose of all the garbage. The landlord stated the tenants failed to remove the garbage.

The tenant testified that she does not remember receiving a rent reduction. The tenant stated that she told the landlord that she would take to the dump what she could. The tenant stated she never agreed to remove all the landlord garbage as there was a significant amount.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid utilities

At the outset of the hearing the tenant agreed they owed the amount of \$83.85 for utilities. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$83.85**.

Ficus Tree and microwave oven

In this case, the landlord moved from the rental premises. The landlord left behind a ficus tree and microwave. The evidence of the landlord was that these were items that were provided under the terms of the tenancy agreement and were to be left in the premises at the end of the tenancy. The evidence of the tenant was the ficus tree was given to her as the landlord could not get the tree into her car and the microwave was garbage that was left behind.

Both parties provided a different version of events regarding the ficus tree, however, I prefer the evidence of the tenants over the landlords as it has the "ring of truth". I find it would be highly unlikely that a term of tenancy agreement would include caring for a household plant. Rather it is highly likely that because of the size of the tree and the fact the landlord was moving and unable to take or sale the tree, she left it behind for the tenant to keep. I find the landlord has failed to prove a violation of the Act by the tenant. Therefore, I dismiss the landlord claim for compensation for the ficus tree.

Both parties provided a different version of events regarding the microwave. However, the landlord has the burden of proof. In this case, the landlord moved from the rental unit leaving the tenant responsible for disposing the landlord personal garbage such as couches. I find in the absent of a tenancy agreement which would indicate what is included in rent, such as microwave. I find it just a likely that the microwave was left behind as garbage too. I find the landlord has failed to prove a loss exits or a violation

of the Act by the tenant. Therefore, I dismiss the landlord claim for compensation for the microwave.

Garbage removal

In this case the landlord seeks to recover the amount of \$100.00, as she claimed the tenants were given a rent reduction to remove the garbage. The evidence of the tenant was that she does not remember if she received a rent reduction. The evidence of the tenant was the landlord left a large amount of garbage behind, which she removed some of the garbage such as the couches, but she never agreed that she would be responsible to clean and haul all the landlord personal garbage after she moved.

I find in the absent of any further evidence from the landlord, such as a bank statement, that they have failed to prove the tenants received a rent reduction. Further, it is unreasonable for a landlord to leave there personal garbage behind, such as couches and expect the tenant to be responsible for the removal and dispose of such items. I find the landlord has failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlord claim.

I find that the landlord has established a total monetary claim of **\$83.85** comprised of the above described amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a formal order for the above amount.

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 14, 2014

Residential Tenancy Branch

