



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed July 14, 2014): MNDC, MNSD, FF

Tenant's application (filed June 26, 2014): MNSD, MNDC, FF

Introduction

This Hearing was convened to consider cross applications. The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Landlord filed an Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The parties acknowledged receipt of each other's Notice of Hearing packages and documentary evidence.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for unpaid rent?
2. Is the Tenant entitled to a monetary award for the cost of repairs?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on March 1, 1991. The Tenant paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.

Rent at the beginning of the tenancy was \$1,100.00, due on the first day of each month. It is not clear from the evidence when the rent was increased, but the parties agreed that rent was \$1,300.00 per month commencing in 2005, and that it remained at

\$1,300.00 per month until the tenancy ended on June 30, 2014, by mutual agreement which was made at a previous Dispute Resolution Hearing. A copy of the Decision for the previous hearing dated April 30, 2014, was provided in evidence.

The Landlord's agent CW gave the following testimony:

The Landlord's Monetary Worksheet indicates that the Tenant is in arrears of rent as follows:

2005	\$4,625.00	
2006	\$5,100.00	
2007	\$7,075.00	
2008	\$4,440.00	
2009	\$3,960.00	
2010	\$200.00	
2011	(\$1,000.00)	Tenant overpaid rent for 2011
2012	(\$700.00)	Tenant overpaid rent for 2012
2013	\$0.00	
2014	\$1,300.00	

CW stated that the Landlord is seeking a monetary award of \$25,000.00 in order to keep within the monetary jurisdiction of the Act. The Landlord also provided a breakdown summary of each year from 2005 to 2014, indicating rent payments paid and a running balance of the outstanding rent. CW stated that the funds were held in a realtor's trust account and therefore could be relied upon as being accurate because they are auditable.

The Tenant gave the following testimony:

The Tenant stated that he had no idea where the Landlord got his figures from. The Tenant testified:

1. Regarding rent for 2005: There may have been months when he was behind, but he can't remember how much he owed.
2. Regarding rent for 2006: The Tenant cannot remember being in arrears at all in 2006.
3. Regarding rent for 2007: The Tenant paid full rent for 2007 but not always on time.
4. Regarding rent for 2008 and 2009: The Tenant paid rent, but maybe not in full, for a reason.

5. Regarding rent for 2010: The Tenant stated that he may have been in arrears for \$200.00. He testified that he didn't have all the rent receipts and that he started paying rent by bank draft at some point in 2010.
6. Regarding rent for 2011: The Tenant stated that he did not overpay.
7. Regarding rent for 2012 and 2013: The Tenant stated that he paid full rent for 2012 and 2013. He did not believe he overpaid rent in 2012.
8. Regarding rent for 2014: The Tenant said he did not agree that he owed any rent for 2014.

The Tenant stated that the rental unit was in disrepair and that he complained many times to the Landlord. The Tenant testified that he paid for the following repairs and items over his 23 year tenancy:

1. New roof
2. Repaired ceiling
3. New carpets (old carpets full of mould)
4. Washer and dryer
5. Fridge and stove
6. \$3,000.00 bathroom renovation
7. Paint

The Tenant testified that he and the Landlord had a verbal agreement that the Tenant would fix the bathroom on the understanding that he could stay in the rental unit for another year, but the Landlord gave him a Notice to End Tenancy. The Tenant stated that the roof was leaking badly and had to be fixed before the bathroom could be renovated.

The Tenant provided a Monetary Worksheet, indicating a breakdown of his costs, along with a number of invoices. His Application for Dispute Resolution indicates that he is seeking a monetary award in the amount of \$5,000.00.

The Tenant questioned why the Landlord took so long to claim for unpaid rent.

CW gave the following reply:

CW stated that the Tenant had made 'numerous promises' to pay off the arrears and that the parties had an agreement that the Tenant would pay an additional \$300.00 per month in addition to rent payments of \$1,300.00 in order to catch up; however, the Tenant did not honour his promises.

CW testified that the parties had agreed that the Tenant was to pay for general repairs in exchange for cheap rent. He stated that the Landlord does not dispute that the Tenant made some repairs and that he recognized that serious repairs were needed, but that the Tenant never asked the Landlord to do the repairs, with the exception of the bathroom and the roof. CW stated that the Landlord had agreed to pay something towards the repairs and that he had paid for half of the roof. CW stated that the Landlord did not agree to any of the other repairs because they were done without the Landlord's permission.

Analysis

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

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

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the party followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the Landlord's claim:

CW testified that the Tenant had agreed in 2011 that he owed a total of \$33,123.50 to the Landlord for rent arrears from as far back as 2005. He stated that the parties had an agreement that the Tenant would pay an additional \$300.00 per month in order to catch up on outstanding rent. However, the Landlord did not provide a copy of any

agreement in writing and the Tenant disputes the Landlord's claim. The Landlord's accounting statements are very confusing and contain information with respect to rent paid by other tenants. The Landlord appears to have confused purported payments towards arrears with rent payments on his Monetary Worksheet. Considering the Landlord's claim is for several years of loss of rent, I find I am not satisfied that the Landlord has demonstrated that sufficient efforts were made to minimize rental losses. Therefore, I do not award the Landlord any loss of rent from 2005 to and including 2013. This portion of the Landlord's claim is dismissed without leave to reapply. Likewise, I find that the Landlord did not provide sufficient evidence to support his claim for unpaid rent for 2014. The Landlord claims \$1,300.00 in arrears for 2014; however, he did not indicate which month the Tenant was in arrears, or (if it was more than one month), which months and how much for each month. I find that the Landlord did not provide sufficient proof of the amount of arrears, if any.

The Landlord's application for unpaid rent is **dismissed, without leave to reapply.**

The Landlord has not been successful in his application, and therefore I make no order with respect to recovery of the filing fee.

Regarding the Tenant's claim:

Neither party provided copies of written agreements between the parties with respect to rent abatement or repairs that were agreed upon. I find that the Tenant did not provide sufficient evidence that the Landlord agreed to most of the repairs and purchases for which the Tenant seeks compensation. With respect to the repairs to the roof and the bathroom, the Landlord does not dispute that he agreed the repairs had to be done; however, the CW stated that the parties had an agreement that the Tenant would make repairs in exchange for cheap rent. I find that the parties co-mingled a tenancy agreement with an employment contract, and that I cannot make findings with respect to the terms of their agreement because it was not put in writing and the terms are disputed.

The Tenant's application for compensation for the cost of repairs is also **dismissed without leave to reapply.**

The Landlord is holding the security deposit. I order that the Landlord return to the Tenant the \$550.00 security deposit, together with accrued interest in the amount of \$211.99, for a total of **\$761.99.**

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$761.99** 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: November 24, 2014

Residential Tenancy Branch

