Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, ERP, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing was also scheduled to deal with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent, dated November 7, 2014 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to recover her filing fee for this application from the landlords, pursuant to section 72.

The "first hearing" for both applications occurred on December 15, 2014. The first hearing lasted approximately 98 minutes. The first hearing was reconvened at a "second hearing" on January 22, 2015, by way of my interim decision, dated January 2, 2015. The second hearing lasted approximately 169 minutes. The second hearing occurred because witnesses were required to testify and additional late relevant evidence had to be considered after the first hearing.

Both parties attended both hearings and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. No witnesses testified at the first hearing. Five witnesses, including "CK," "KT," "PL," "VV," and "LR" testified on behalf of the landlords at the second hearing. No witnesses appeared on behalf of the tenant at either hearing. The tenant indicated that she intended to call her live-in caregiver, "DM," as a witness at the first hearing, but the hearing concluded after 98 minutes with no witnesses having testified. The tenant indicated at the outset of the second hearing that she did not intend to call any witnesses, and at the end of the second hearing, the tenant indicated that witness DM was working during the hearing time.

The landlord DW ("landlord") attended both hearings personally and on behalf of the "landlord company" MCRL (collectively "landlords"). The landlord confirmed that he is the owner of the landlord company named in these applications and the property manager of the rental unit, and confirmed that he had authority to act as agent on behalf of the landlord company at this hearing. At the second hearing, the landlord confirmed that his lawyer, LM, had authority to represent both landlords at the second hearing. The landlords' lawyer only appeared on behalf of the landlords at the second hearing, not the first hearing.

Service of Documents

The landlord testified that he served the tenant with the 10 Day Notice on November 7, 2014, by posting it to her rental unit door. The tenant confirmed receipt of the notice on November 10, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on November 10, 2014.

The landlord testified that he served the tenant with the landlords' application for dispute resolution hearing package ("Landlords' Application") on December 4, 2014, by way of registered mail. The tenant acknowledged receipt of the Landlords' Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the Landlords' Application, as declared by the parties.

The tenant testified that she personally served the landlord with her application for dispute resolution hearing package ("Tenant's Application") on December 12, 2014, just three days before the first hearing. The tenant stated that her evidence was late because she required additional time to gather evidence and respond to the Landlords' Application. Although the tenant's written evidence was due at least 14 days before the first hearing, the landlord confirmed receipt of the evidence, advised that he had a chance to review the evidence, and had no objection to proceeding with the first hearing

on the basis of this evidence. In accordance with sections 89 and 90 of the Act, I find that the landlords were duly served with the Tenant's Application, as declared by the parties. Given the above, I proceeded with the first hearing and considered the Tenant's Application and evidence, finding no prejudice to the landlords.

As noted in my interim decision of January 2, 2015, the parties were required to serve specific evidence and permitted to serve other additional evidence after the first hearing and prior to the second hearing, in accordance with the timelines and rules set out in the Residential Tenancy Branch ("RTB") Rules of Procedure.

The landlord testified that he served the tenant with the landlords' required written evidence, as per my interim decision of January 2, 2015, as well as other additional evidence (also "Landlords' Application") on January 7, 2015, by way of registered mail. The tenant acknowledged receipt of the landlords' required and additional written evidence on January 12, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' additional written evidence, as declared by the parties.

The tenant testified that she served the landlords' lawyer with the tenant's required written evidence, as per my interim decision of January 2, 2015, as well as other additional written evidence (also "Tenant's Application") on January 20, 2015, just two days before the second hearing. The tenant stated that her evidence was late because she was out of town from January 1 to 15, 2015 and upon returning, she received my interim decision and realized the second hearing had been scheduled for January 22, 2015. Although the tenant's written evidence is due at least 14 days before the second hearing, the landlord confirmed receipt of the evidence, advised that he had a chance to review the evidence, and confirmed that in the interests of avoiding further delays, he had no objection to proceeding with the second hearing on the basis of this evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlords were duly served with the tenant's additional written evidence, as declared by the parties. Given the above, I proceeded with the second hearing and considered the tenant's additional written evidence, finding no prejudice to the landlords.

Amendment of Applications

At both hearings, the tenant referenced her intention to pursue a monetary order of approximately $17,112.00 for damages to the tenant's antique furniture, as a result of the emergency repairs she had to perform at the rental unit. The tenant did not apply for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement. The tenant initially applied for a monetary order

for the cost of emergency repairs, which she indicated was $25,000.00 total, as noted on her application. At both hearings, the tenant clarified that $7,888.00 was for emergency repairs and the remainder amount of $17,112.00 was for damaged antique furniture caused by the roof leak, which she says is due to the landlords' negligence. Both parties attended both hearings, which lasted almost 4.5 hours in length discussing these issues. The landlords had the benefit of representation from a lawyer at the second hearing, the tenant indicated the $25,000.00 monetary amount in her original application, and the landlords had notice of the tenant's claims in this regard. Accordingly, in the interests of efficiency and expediency, I am satisfied that there is no prejudice to the landlords in amending the Tenant's Application to add the relief of a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, regarding the damaged antique furniture, in the amount of approximately $17,112.00. I make this amendment in accordance with my authority to do so under section 64(3)(c) of the *Act*.

At the second hearing, the landlords sought to amend their application to add a request for a monetary order against the tenant for unpaid January 2015 rent in the amount of $5,100.00. Given the length of time that had passed between the first and second hearings, January 2015 rent had already become due. Both parties made submissions at the second hearing regarding whether January 2015 rent had been paid. I find that the tenant had notice of the landlords' application regarding January 2015 rent, as she stated that she spoke with the landlord about settling both applications which included paying for January 2015 rent. Accordingly, in the interests of efficiency and expediency, I am satisfied that there is no prejudice to the tenant in amending the Landlords' Application to add the relief of a monetary order for unpaid rent for January 2015 in the amount of $5,100.00. I make this amendment in accordance with my authority to do so under section 64(3)(c) of the *Act*.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords and/or the tenant entitled to recover the filing fee(s) for their applications?

Background and Evidence

The landlord testified that he has been a property manager for over 25 years and has managed this rental unit for 8 years. The landlord stated that this tenancy began on February 1, 2014, for a fixed term ending on January 31, 2015, after which it transitions to a month to month tenancy. Monthly rent in the amount of $5,100.00 is payable on the first day of each month. A security deposit of $2,550.00 was paid by the tenant on January 22, 2014. The tenant continues to reside in the rental unit, which is a house.

The landlords' amended application for a monetary award of $15,300.00 is for November 2014, December 2014 and January 2015 unpaid rent. The landlords also seek an order of possession for unpaid rent, to retain the tenant's security deposit of $2,550.00 in partial satisfaction of the monetary award, and to recover the $100.00 filing fee for their application.

The tenant seeks to cancel the landlord's 10 Day Notice, a monetary order of $7,888.00 for the cost of emergency repairs, a monetary order of $17,112.00 for damaged antique furniture, as well as to recover the $100.00 filing fee for her application.

Rent

At the first hearing, both parties agreed that the tenant did not pay her rent for November and December 2014, in the total amount of $10,200.00. The tenant testified that she did not pay this rent because she paid for emergency repairs on behalf of the landlord, totalling $7,888.00. The tenant indicated that she had entitlement to deduct this repair amount from rent. She also stated that the RTB advised her not to pay for December 2014 rent until she received a decision following the first hearing. At the first hearing, the tenant testified that she was agreeable to paying the difference between the rent owed and the emergency repairs of $2,312.00, stating that she made an offer to the landlord but did not receive a response.

At the second hearing, the tenant testified that she paid $20,400.00 total on December 19, 2014, after the first hearing, for four months of rent including for November 2014, December 2014, January 2015 and February 2015. The tenant stated that this was a

settlement agreement reached with the landlord, whereby both parties would withdraw their applications upon payment of the above amount. The tenant provided a copy of a cheque in the amount of $20,400.00, dated December 19, 2014, as well as two emails, dated December 16 and 19, 2014, from the tenant to the landlord, regarding this settlement. The tenant also provided a copy of her bank statement indicating that her cheque of $20,400.00 was cashed by the landlord on December 20, 2014.

The landlord testified that there was never any agreement with the tenant to withdraw either party's claims based on any settlement, no emails from the tenant regarding any settlement or offer by the tenant to pay money, and no rent cheque left in his mailbox, as claimed by the tenant. The landlord maintained that he did not cash any cheque for $20,400.00, as claimed by the tenant. The landlord provided copies of bank notices indicating that the tenant's post-dated rent cheques of $5,100.00 for each of November 2014, December 2014 and January 2015, were all returned for insufficient funds.

Roof Leak

The tenant stated that she noticed a leak on September 29, 2014 in the art room and on the basement level of the rental unit, with water staining on the ceiling and carpets of each room. The tenant testified that the leak came from the chimney area of the roof and that a part of the ceiling in the art room "collapsed" and water came "pouring" through. The tenant indicated that a water stain was visible on the floor outside a bathroom and laundry area on the basement level below the art room. The tenant stated that she made her best efforts to contain the leak by using buckets and towels, and that she did this for 3 days "around the clock."

The tenant testified that she called the landlord 12 times and emailed him twice on September 29, 2014, with no answer from the landlord. The landlord denied receiving any phone calls or emails from the tenant on this date. The tenant provided a photograph of her cell phone screen to show the phone calls to the landlord's phone number. However, the photograph did not indicate the date of the phone calls. The tenant stated that no dates are displayed when multiple phone calls are made on her particular type of cell phone, while the landlord's lawyer noted that dates were displayed in the same photograph for multiple phone calls made to other numbers.

The tenant testified that the roof leak was known to the landlord for a long time but that the landlord did not know the source of the leak. The tenant stated that the roof leak was present when she moved in to the rental unit and that she had asked the landlord to fix it but he failed to do so. The tenant said that the landlord admitted to knowing about the roof leak through his emails to her in August 2014.

The landlord denied that any emergency repairs were required to the roof, art room or basement of the rental unit. He stated that there was a previous water leak in the kitchen but it was fixed at his expense. The landlord submitted receipts for various repairs and landscaping completed for the rental unit, stating that he has paid for and completed any required work for the rental unit in a timely fashion. He stated that he would have repaired any potential roof leak, had he been notified by the tenant. The landlord stated that the photographs showing alleged roof leaks, submitted by the tenant in her application, are not photographs of the rental unit. The landlord stated that the only photograph he recognized were of ceiling holes in the September 3, 2014 email from the tenant to the landlord.

The landlord's witness, PL, testified at this hearing and confirmed that he works as a plumber with company ACGI. PL confirmed that he is not a structural engineer. PL stated that he attended at the rental unit in March, May, August, and November 2014. PL indicated that he attended at the rental unit for the first time on March 21, 2014, in response to an emergency service call regarding a water leak in the kitchen and basement. He confirmed that he issued an invoice #20997, dated June 2, 2014, in the total amount of $1,155.00, which was provided with the Landlords' Application. The invoice states that for a charge of $450.00, PL located a leak in the sink drain behind the kitchen cabinet and replaced a broken drain pipe. PL stated that this leak did not involve the art room and caused carpet staining in the basement. PL testified that the same invoice included a second service call on May 21, 2014 for a furnace and heating problem and a third service call for a barbeque box that was not functional.

PL testified that he attended at the rental unit for a fourth time on August 1, 2014. The landlord testified that PL was hired to complete a yearly cleaning and flushing of drain tile lines in order to prevent clogging. PL issued an invoice #21062, provided in the Landlords' Application, of $871.50 total, which included $500.00 for the drain cleaning. At the same time, PL charged $330.00 on the same invoice to respond to a complaint from the tenant regarding a water leak in the ceiling of the art room. PL attempted to locate the source of the possible leak by removing a section of drywall and drilling two holes through the ceiling to locate a leak. PL confirmed that he did not find any water source and left the two holes open to determine if water might come through in the future. PL found a slight drip from the bathtub beside the art room but concluded that it was not likely the water source. PL successfully replaced the bathtub drain at this time.

The landlord indicated that he issued written notice of inspection issued to the tenant on November 21, 2014. The tenant denied receiving any notice. PL testified that he inspected the entire rental unit on November 25, 2014, with the landlord and another employee, EM. PL stated that he inspected the upper floor and the art room and failed

to find any signs of water damage or water leaks. PL confirmed that he did not feel any moisture or smell any mold, as claimed by the tenant. PL stated that he checked the two holes that he had previously drilled and left open in August 2014; he stated that the area was completely dry. PL also noted that there was no water on the ceiling or on the carpets below, in the art room.

The tenant testified that she and her live-in caregiver DM were present at the rental unit on November 25, 2014 and no inspection by the landlord or PL, occurred. The tenant stated that the inspection occurred on November 26, 2014, when she was not present. The tenant claimed that the landlord verbally announced that he was entering the rental unit, when only DM was present. The tenant denied that the landlord and PL inspected the upper floor or the art room, claiming that only the basement was inspected.

PL testified that he completed an inspection report the next day on November 26, 2014, as was his usual practice, given his long work hours each day. The inspection report, dated November 26, 2014, was provided with the Landlords' Application, indicating that there were no visual leaks or signs of water damage. As noted on the inspection report, all areas of the main floor and basement were inspected. The tenant stated that during this inspection, the landlord walked quickly through the rental unit in about 3 to 4 minutes and walked right by a noticeable water stain in the basement area. PL confirmed that he did not see a stain on the carpet even though he walked by the washer and dryer in that area.

The tenant provided a report, invoice and receipt for a "roof repair" purportedly performed by "company AR" due to "emergency leak in chimney." She testified that she paid $7,888.00 for these emergency repairs, and provided emails to the landlord attaching these documents and photographs of the roof leak. The landlord testified that the tenant has made a fraudulent claim for emergency repairs in the amount of $7,888.00. The landlord maintains that he never agreed to reimburse the tenant for any emergency repairs at any time.

The landlord's witness, KT, testified that he has been the manager of the roofing company AR for 35 years. KT confirmed that company AR's current website address was not sold to the company 2 years ago, as claimed by the tenant. KT confirmed that the company is located in city "R" now, and was only in city "V" 20 years ago but not in the same area of "K," as the tenant claims. KT confirmed that there are no other roofing companies in city V with the same name as company AR, as claimed by the tenant, and that KT is aware of all of the legitimate roofing companies presently in city V.

KT verified that he reviewed the tenant's invoice, receipt and report purportedly from company AR ("roof repair documents") for the alleged roof repair. KT stated that he works with "JH" at the company, who is a construction safety officer. KT confirmed that company AR provided two letters written by JH, dated December 15 and 16, 2014, to the landlords, indicating that company AR did not perform or bill for any work for the tenant at the rental unit. KT confirmed all of the information contained in both letters. The letters state that the address on the tenant's roof repair documents is not company AR's address, the invoice number does not resemble company AR's invoice numbers and that there has never been an employee of company AR named "US," as per the tenant's roof repair documents. KT testified that no one named "AS" works at company AR, as per the tenant's email from witness AS. The letters also state that company AR did not supply the roof report submitted by the tenant and that a structural report must be completed by an engineer. KT further stated that company AR's correct phone number and email address appear on the tenant's roof repair documents, while the mailing address is incorrect.

The landlord's witness, VV, testified that he has been a mortgage broker for 30 years and has no personal or financial interest in the rental unit property. VV confirmed that he attended a condition inspection of the rental unit, as requested by the landlord, together with the landlord and witness LR on December 22, 2014. VV confirmed that he had never attended the rental unit before this date. The landlord provided a number of photographs, which he took during this inspection, of the exterior of the house, including the roof and chimney, as well as the interior of the house, including the art room. VV verified that he watched the landlord take the photographs of the rental unit on December 22, 2014, and confirmed that they are accurate representations of the rental unit. KT confirmed that he reviewed the tenant's photographs and that they were not an accurate representation of the rental unit.

The landlord's witness, LR, testified that she is in the mortgage finance and brokerage field. LR also stated that she is a part owner of the landlord company named in this application, together with the landlord. LR testified that she attended an inspection at the rental unit on December 22, 2014 with the landlord and witness VV. LR maintained that she did not see any water damage in the art room or anywhere else in the rental unit, during this inspection. LR inspected the basement level of the rental unit outside the bathroom, as well as in front of the washer and dryer area, and did not recall any water damage. LR verified that the landlord's photographs are accurate representations of the rental unit, while the tenant's photographs, which she reviewed, were not. PL also reviewed the landlords' photographs and testified that they were accurate representations of the rental unit, while the tenant's photographs were not.

Antique Furniture

The tenant testified that her antique furniture was destroyed from the roof leak, as it was located in the art room where the leak occurred. At the hearing, the tenant stated the value of these damaged antiques is approximately $60,000.00 plus GST for one coffee table and two dressers. She testified that she is not claiming for damage to the decorative door, which was purchased for $20,000.00 plus GST, or the two chaise loungers in the amount of $7,991.65.

Initially, the tenant intended to pursue the full value of these antiques, which she says is approximately $100,000.00 total at both the RTB and the B.C. Supreme Court. As per my interim decision, dated January 2, 2015, the tenant was cautioned as to splitting her claim and was advised to either pursue a reduced claim of $25,000.00 at the RTB, as this is the monetary limit of the RTB, or the full value of $100,000.00 at the B.C. Supreme Court. At the second hearing, the tenant testified that she will not be pursuing any portion of her $100,000.00 claim in the B.C. Supreme Court. The tenant testified that she is only pursuing a reduced claim of $25,000.00 at the RTB only. The tenant confirmed that her claim at the RTB is limited to $25,000.00 minus the $7,888.00 in emergency repairs, which equals $17,112.00 for damaged antiques.

The tenant provided a receipt for the purchase of this antique furniture (“antiques receipt”), which was handwritten over a computer printed sample from “company CKID.” The antiques receipt appears to have the tenant’s handwriting at the top of the document, when compared to the tenant’s application, which was also handwritten. The antiques receipt indicates that the antique furniture was “paid in full” by way of “cert chq” in the total amount of $93,591.65.

The landlords’ witness, CK, testified at this hearing and confirmed that she is the owner of company CKID. CK stated that she reviewed the tenant’s antiques receipt, which she confirmed was written on a “sample proposal” from company CKID’s website. CK confirmed that she did not issue the antiques receipt, that she did not complete any work for the tenant or sell any antique or other furniture to the tenant. CK indicated that she has never heard of the tenant or met the tenant. CK confirmed that she has never completed any work in city V where the tenant lives. CK stated that her company CKID is not incorporated in B.C., that she has not done any business in Canada, and that her company logo is not trademarked.

CK confirmed that she provided an email, dated December 17, 2014, to the landlords’ witness LR, regarding the above information and attaching the sample proposal from her website. LR testified that she received this email and sample proposal from CK.

CK stated that this sample proposal was available to anyone who accessed company CKID's website. The sample proposal was provided by the landlords in their written evidence. At the top of the sample proposal is the name of an article and at the bottom is the remainder of the article as well as a URL address for company CKID's website. On the tenant's antiques receipt, there is no URL address, article name or article information. The sample proposal shows a photograph of a chair, a description of two swivel chairs and the price of $7,991.65. On the tenant's antiques receipt, "2 pcs chaise loungers" is written in the area where the two swivel chairs are described on the sample proposal, but the photograph and pricing remains the same as the sample proposal at $7,991.65. On the sample proposal, where two swivel chairs fabric is indicated to be $383.69, the tenant's antiques receipt instead states a description for two imported antique dressers, one coffee table and one door for a price of $20,000.00 each, totalling $80,000.00, plus an additional 7% GST of $5,600.00.

The tenant provided an email, dated January 19, 2015, from "MC" who states that he is employed with company CKID. CK stated that she is the sole employee at company CKID and that there has never been another employee named MC. MC's email purports to be from company CKID using a specific email address. During the hearing, CK verbally provided all of the email addresses that she uses for company CKID and none of them matched MC's email address. MC's email states that the tenant purchased antique furniture on February 1, 2014 and it was delivered the next day. CK indicated that she does not work on Sundays, which is the delivery day of February 2, 2014. MC's email indicates that there is a showroom for this furniture in city V. MC's email states that a receipt was provided to the tenant for a final sale purchase as company CKID was closing its business. MC's email states that no GST or PST taxes were charged to the tenant and that MC did not want to be contacted because of this fact. The email indicates that the tenant paid $100,000.00 "even" and that the design fees and "chaise lounger" were provided to the tenant for free.

The landlords' witness VV confirmed that there was no antique furniture or any damaged furniture when he inspected the rental unit on December 22, 2014. The landlord's witness LR testified that she did not see any furniture at all, including any damaged furniture, in the art room on December 22, 2014. LR indicated that the entire rental unit was decorated very sparsely with very little furniture.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all

details of the respective submissions and arguments are reproduced here. The principal aspects of both party's claims and my findings around each are set out below.

Credibility

Given the conflicting testimony from both parties and the witnesses, much of this case hinges on a determination of credibility. A useful guide in that regard is found in the case of *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

> *"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions..."*

In addition to the manner, tone and demeanour of the party's and witness' evidence, I have considered the content, and whether it is consistent with the other events that took place during this tenancy.

I found the landlords' evidence to be truthful, reliable and credible. The landlord's demeanour during the hearing has convinced me of his credibility. The landlord answered all questions asked of him in a calm and candid manner and never wavered in his version of what happened. Moreover, the landlords provided sufficient written documentation, which I accept, to support their own application as well as to refute the Tenant's Application. The landlords' written evidence was supported by testimony from five independent witnesses, three of whom the landlord had never met and had no contact with, prior to filing the Landlords' Application. I accept the evidence of all five of the landlords' witnesses. The landlord also made some important admissions, including the fact that there were other leaks in the rental unit and that he recognized one of the tenant's photographs of holes in the ceiling at the rental unit. These admissions were not helpful to the landlords' case, which suggest that the landlord was being truthful.

I did not find the tenant's oral or written evidence to be truthful, reliable or credible. I find that the tenant provided multiple documents of questionable origin and authenticity. When questioned as to multiple discrepancies in her various documents, the tenant provided unreasonable and improbable explanations. Accordingly, I do not attach any weight to the tenant's written evidence, including her emails, photographs, witness

statements and other documentary evidence. I find that the tenant failed to provide sufficient documentary, witness or other corroborating evidence to support the tenant's claims with respect to her own application or to refute the Landlords' Application.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. In the circumstances before me, I find the version of events provided by the landlords to be highly probable, given the conditions that existed at the time. Considered in its totality and based on a balance of probabilities, I find the evidence presented by the landlords more credible than that of the tenant.

Documents

The landlord points to the 10 Day Notice and the Notice of Hearing as documents that were altered by the tenant, raising credibility issues. The landlords' copy of the 10 Day Notice states that the notice was served by posting to the tenant's rental unit door, as the box entitled "on the door" is checked off at the bottom of the 10 Day Notice. The tenant confirmed receipt of the notice by way of posting to her door. However, the tenant's version of the 10 Day Notice show the box entitled "by registered mail" checked off instead of "on the door." The remainder of the tenant's version of the 10 Day Notice is identical to the landlords' version. It is clear that the checkmark on the tenant's version is completely different and that some wording has been partially removed, as compared to the landlords' version. Altering legal documents after they have been issued is not permitted. I find that the 10 Day Notice was likely altered after it had been issued by the landlords to the tenant.

The landlord also provided a copy of a Notice of Hearing for the first hearing date, which he says was served to him by the tenant, indicating that the hearing is on December 22, not December 15, 2014. The landlord claimed that the tenant altered the date so that he would miss the hearing. The landlord's copy clearly shows a black line above the date and the date appears to be on a crooked angle, indicating that the notice was likely altered. The landlord stated that he was only advised of the correct hearing date of December 15, 2014 when he attended at the RTB to file his cross-application on December 4, 2014, after the tenant had already filed her application. The tenant's version of the hearing notice indicates December 15, 2014 as the correct hearing date, not December 22, 2014. I find that the Notice of Hearing, which is a legal document, was likely altered after it had been issued by the RTB to the tenant.

At the outset of the second hearing, the tenant confirmed that she personally received the landlord's written evidence package on January 12, 2015, by way of registered mail. When questioned by the landlord's lawyer as to the tenant's earlier testimony that she

was out of town from January 1 to 15, 2015, the tenant then revised her evidence to state that she did not sign for the registered mail package on January 12, 2015 and that someone else received it in her absence. The tenant also claimed that she was unable to serve evidence to the landlords in a timely manner before the second hearing date. This is despite the fact that I verbally advised the tenant at the first hearing on December 15, 2014, about the specific evidence that she was required to re-serve in advance of the second hearing.

10 Day Notice and Rent

The tenant received the 10 Day Notice on November 10, 2014 and filed her application for dispute resolution on November 17, 2014, the next business day after it was due on Saturday, November 15, 2014. Accordingly, the tenant filed her application within the five days required as per section 46(4) of the *Act*.

Section 26(1) of the *Act* states that the tenant must pay rent when it is due, regardless of whether the landlord complies with the *Act*, *Regulation* or tenancy agreement, unless the tenant has a right to deduct rent as per the *Act*.

On a balance of probabilities, I find that the tenant failed to pay the full rent of $5,100.00 due on November 1, 2014, as per the 10 Day Notice, within five days of receiving the notice. Although the tenant claims to have paid $20,400.00 for rent from November 2014 to February 2014, I find that the tenant did not provide sufficient evidence of this fact. The tenant provided a photocopy of a cheque that she wrote to the landlord, which does not prove that she gave this cheque to the landlord. The landlord denied receiving any cheque from the tenant. The tenant also provided a bank statement to show that the cheque had been cashed by the landlord. The landlord denied cashing any cheque from the tenant. The tenant's bank statement was dated for December 2013, a copy of which was received by me and the landlords' lawyer; however, the tenant insisted that her own copy of the bank statement was dated for December 2014, which she says is the correct date. Aside from this significant date discrepancy of one year, the bank statement indicates that a cheque was cashed by the landlord company, when bank statements usually do not indicate the full name of a cheque recipient on a bank statement. The tenant did not provide a copy of the cashed cheque itself, indicating the date and location that it was cashed, a document which is usually available from any financial institution.

I also find it improbable that the tenant suddenly paid rent owing to the landlord after the first hearing, including an additional future month's rent for February 2015, as this was not yet due at the time of the first or second hearing. As the tenant seeks $25,000.00

from the landlord including repairs of $7,888.00, it is surprising that she allegedly paid $20,400.00 to the landlord. The tenant said that this payment was intended to be a settlement of both the landlords' and tenant's applications, but the landlord denied this fact. It is also improbable that the landlord refused to take any rent payments from the tenant, if offered, particularly when rent had been accruing for at least 3 months.

Emergency Repairs

Section 33 of the *Act* discusses when the cost of emergency repairs can be deducted from rent. Section 33(1)(a) and (b) define emergency repairs as "urgent" and "necessary for the health or safety of anyone or for the preservation or use of the residential property." Section 33(1)(c)(i) includes major leaks in the pipes or roof as an emergency repair. Section 33(3) indicates that a tenant may have emergency repairs made only when all three of the following conditions are met: (a) emergency repairs are needed; (b) the tenant has made at least 2 attempts to telephone the person identified by the landlord as the person to contact for emergency repairs; (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs. Section 33(5) states that a landlord must reimburse a tenant for repairs if the tenant claims reimbursement and provides a written account and receipts. Section 33(6)(a) states that 33(5) does not apply if the tenant made the repairs before one of the conditions in 33(3) were met. If the landlord does not reimburse the tenant as per 33(5), the tenant may deduct the amount from rent.

The landlord indicated that the first time he saw the tenant's emails regarding a roof leak was when he received the Tenant's Application. Interestingly, the tenant's two emails to the landlord on September 29, 2014, the day she claims the roof leak occurred, are at 3:45 and 4:04 p.m. The tenant's summary of evidence, provided with her application, indicates that the tenant arrived at 10:30 a.m. to find "…in the art room…the ceiling had collapsed where the water was pooling and the water was pouring on to the floor." The tenant waited over 5 hours to contact the landlord by email to advise him of this urgent situation. In her second email on September 29, 2014, the tenant indicates that "…I will wait a couple days and I will go to your office again to see if anyone is there." Yet, the tenant did not testify about going to the landlord's office or trying to reach him in any other way aside from phoning and emailing. Given the urgent nature of this situation, as per the tenant's evidence, it is surprising that the tenant would wait "a couple days" to reach the landlord. It is also interesting that the tenant waited a further 7 days to have the roof leak fixed on October 6, 2014, as per her roof repair documents. The tenant did not contact the landlord again until October 10, 2014, when she emailed him to attach an invoice for roof repair, which is a total gap of 11 days. Moreover, the tenant's emails from September 29 and October 10, 2014, are

sent from a different email address than the tenant's other emails to the landlord. This email address does not contain the tenant's name, but rather the name of a company.

The tenant's summary also indicates that "…we immediately began removing the antiques because they were already turning a different color from all of the water and they were very expensive." The tenant's witness statement from her live-in caregiver, DM, indicates that DM arrived at 12 noon to find the leak and she "helped [tenant's name] remove some of her antiques from the room..." This gap from 10:30 a.m. to 12:00 p.m., which is 1.5 hours and hardly "immediate," was not explained by the tenant. DM's statement was undated and unsigned. DM did not testify at this hearing. DM's statement was not corroborated by any independent evidence. I do not find DM's statement to be credible and I do not attach any weight to it.

On a balance of probabilities, I find that the tenant has failed to prove that she made any phone calls or sent any emails to the landlord to alert him about a possible roof leak. I find that the tenant's evidence in this regard is not credible. The landlord denied receiving any phone calls and emails from the tenant. I prefer and accept the evidence of the landlord, who I found to be a credible witness. Thus, the tenant has not met the required test under section 33(3)(b) of the *Act,* requiring the tenant to make at least two attempts by telephone to contact the landlord for emergency repairs.

On a balance of probabilities, I also find that there was no roof leak and thus, no emergency repairs were required, as per section 33(3)(a) of the *Act*. The tenant did not provide sufficient evidence to demonstrate a roof leak. The tenant provided a number of photographs showing arbitrary stains on ceilings and carpets, but these images are cropped and do not show the full rooms. The landlord stated that the tenant's photographs do not represent this rental unit, as they are markedly different than the actual unit. Three of the landlords' witnesses, PL, VV and LR, all confirmed that they attended at the rental unit and the tenant's photographs did not accurately represent the rental unit, while the landlords' photographs from December 22, 2014 were accurate.

When questioned as to the vast difference between the landlords' and tenant's photographs of the art room, the tenant claimed that the landlord took photographs on December 22, 2014 after the tenant renovated the art room. The tenant did not state what date the renovations occurred and did not provide any receipts for such renovations. The tenant claims to have spent approximately $3,000.00 for these renovations, which she says were actually worth $5,000.00. She indicated that she replaced a door which had the glass inlay smashed on the door; however, the tenant's original photograph of the art room shows a fully solid door, not a glass door. The tenant's own two photographs of the art room, one showing an alleged roof leak and the

other showing an antique dresser, show a completely different wall colour in the same room. The tenant's own photographs are in conflict with each other. Once again, the tenant's evidence is not believable in this regard. The tenant had earlier testified that she had no money to pay rent to the landlord because she paid for emergency repairs to the roof. The tenant claims $25,000.00 for damaged antiques and emergency repairs. Yet, the tenant claims that she completed additional renovations to the rental unit at her own expense after the landlord refused to reimburse her for the roof leak.

I also note that the tenant was unable to provide an adequate explanation for the vast difference in shape, size and colour, between the landlords' and tenant's photographs of the chimney at the rental unit. The tenant's own photographs of the chimney are different from each other in colour, shape and size, and do not appear to be the same chimney. The landlords' photographs of the chimney are all the same color, size and shape. The tenant explained that there were two chimneys located on opposite sides of the house and that the landlord did not provide a photograph of the second chimney where the roof leak occurred. The landlords' exterior photographs show almost the entire house, with very small edges of the house missing. The tenant indicated that she had two fireplaces in the rental unit; the landlord stated that there were two fireplaces but they were located back-to-back with each other and were shared by the same chimney. The landlords' chimney photographs were all verified by the landlord's witnesses, PL, LR and VV. I find the landlords' photographs and evidence believable in this regard.

I found the landlords' witness VV to be an honest, credible and forthright witness who had no interest in these proceedings and therefore, no motivation to provide dishonest testimony. I accept the evidence of VV in its entirety. Although the landlords' witness LR works with the landlord and has a financial interest in the landlord company named in these proceedings, I found witness LR to be an honest, credible and forthright witness. I accept the evidence of LR in its entirety.

On a balance of probabilities and as I have accepted the testimony from the landlords and their witnesses, I find that the landlords' photographs, taken on December 22, 2014, are accurate representations of the rental unit. I find that the tenant's photographs are not accurate representations of the rental unit and I do not attach any weight to the tenant's photographs. I find that there is no evidence of any roof leak or repaired chimney in the landlords' photographs.

I accept the witness testimony from PL, the plumber who attended at the rental unit. Although PL is not a structural engineer, he is a certified plumber who deals with leaks and water damage on a regular basis. I found PL to be a credible and honest witness

who provided evidence in a straightforward manner. PL made admissions that were not necessarily helpful to the landlords' case, including finding a leak in another part of the rental unit and not being able to find the source of this leak. PL inspected the rental unit in March, August and November 2014, both before and after the tenant complained of a roof leak in the art room in September 2014. PL found a leak in the kitchen and basement in March 2014 and rectified the issue, although he did not find a clear source of the leak except possibly from a nearby bathroom. PL assessed the entire house and did not find any leaks in the roof or the art room in August or November 2014. PL drilled holes in the ceiling of the art room to determine if any water was leaking. PL found these holes to be completely dry with no staining anywhere on the ceiling or the carpets of the art room or the basement. PL issued invoices and a written report regarding his inspections and findings.

I accept the landlords' submission that company AR never completed or charged the tenant for any roof repair at the rental unit. I reject the tenant's submission that another company with the same name as company AR, completed or charged the tenant for the roof repair. I do not give any weight to the tenant's roof repair documents, which the tenant maintains are from company AR. In examining the tenant's roof repair invoice and receipt, I note that the tax rate imposed on the repair is 8.25%. The tax rate for BC is 5% GST and 7% PST, which totals 12%. The 8.25% tax rate does not match any GST, PST or HST rate found in any Canadian province for the year 2014. Further, the total of $7,287.00 with a tax rate of 8.25% equals $601.18, not $601.00 as claimed in the tenant's receipt. Once again, the above information questions the authenticity of the tenant's roof repair documents.

I found the landlords' witness KT, from company AR, to be an honest, credible and forthright witness who had no interest in these proceedings and therefore, no motivation to provide dishonest testimony. I accept the evidence of KT as well as the two letters provided by company AR, dated December 15 and 16, 2014. Accordingly, I do not give any weight to the tenant's roof repair documents purporting to be from company AR.

I do not attach any weight to the email from the tenant's witness, AS, regarding the roof repair documents. The landlords' witness KT indicated that AS is not an employee of company AR. AS indicated that his company was different from company AR. AS stated that company AR is located in the city of R and is not to be "confused" with AS's company with the same name. Yet, AS is using the exact same name, mailing address, website and phone numbers of company AR, as confirmed by witness KT. AS explained that he had not "updated" his mailing address, website or phone numbers on his receipts. AS stated that he sold company AR's website address, yet KT stated that company AR's website has always been the same and was never bought from anyone.

AS also indicated that he operates in the city of V from a home office, while KT indicated that company AR moved from the V location over 20 years ago. AS did not testify at this hearing and did not provide any signed statements. I accept and prefer the evidence of the landlords' witness KT as compared to the evidence of the tenant's witness AS.

On a balance of probabilities, I find that there were no emergency repairs required for a roof leak and the tenant did not have any roof leak repaired at the rental unit. Therefore, the tenant was not entitled to deduct any amounts from rent for emergency repairs for the period from November 2014 to January 2015.

In the event that my findings are incorrect as stated above, I find that any potential roof leak that may have occurred at the rental unit, was not due to the negligence of the landlords. The tenant did not provide sufficient evidence that the landlords knew or should have known about problems with the roof, including leaking. The tenant provided a number of emails, claiming that they show the landlords' knowledge of a roof leak. I do not find that the emails demonstrate this fact and I do not attach any weight to the emails submitted by the tenant. I prefer the evidence of the landlord, on a balance of probabilities, that he did not receive any emails from the tenant regarding a roof leak and that he was not aware of any problems with the roof. I find it questionable that the tenant moved into the rental unit and agreed to pay $5,100.00 per month for rent, when she claims that she was fully aware of multiple problems with the rental unit, including a leaking roof. I find the tenant's evidence in this regard to be improbable.

On a balance of probabilities, I find that the tenant did not pay the rent due for November 2014, as per the 10 Day Notice, and that she did not have any entitlement to deduct any amounts from rent for emergency repairs. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent due within five days of receiving the 10 Day Notice led to the end of this tenancy on November 20, 2014, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and any other occupants on the premises to vacate the premises by November 20, 2014. As this has not occurred, I find that the landlords are entitled to a **2 day Order of Possession**.

The landlords provided evidence that the tenant failed to pay $5,100.00 in rent for each of November 2014, December 2014 and January 2015. Therefore, I find that the landlords are entitled to rental arrears outstanding in the amount of $15,300.00 total against the tenant.

The landlords continue to hold the tenant's security deposit of $2,550.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to

retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period. As the landlords were successful in their entire application, I find that they are entitled to recover the $100.00 filing fee from the tenant.

Accordingly, the tenant's application to cancel the landlords' 10 Day Notice, dated November 7, 2014, and for a monetary order for the cost of emergency repairs to the rental unit, is dismissed without leave to reapply.

Antique Furniture

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlords caused damage beyond reasonable wear and tear to the tenant's antique furniture.

The tenant provided a handwritten antiques receipt. The tenant provided four photographs of a coffee table and two dressers, that she said were destroyed by the roof leak. The photographs show very little alteration and discoloration to the furniture. One of the dressers appears to be completely unaltered with just dirt located at the top of the dresser. Further, the tenant claims that as soon as the water began "pouring" into the art room of the rental unit on September 29, 2014, she "immediately" began removing the antique furniture, which she said began changing colors immediately. I do not accept the tenant's evidence in this regard and I do not find it probable that furniture begins immediately changing colour when water is applied to it.

I find that the tenant's claim for a monetary order for damaged antique furniture is completely devoid of merit. As noted above, I did not find that there was a roof leak at this rental unit. Even if there was a roof leak, I do not find that the tenant suffered any damage or losses as a result. I do not attach any weight to the tenant's antiques receipt. I do not accept the tenant's assertion that company CKID's trademark was stolen by another company and used to create the antiques receipt. This is the same explanation given by the tenant for the roof repair documents purporting to be from company AR. The antiques receipt appears to be in the tenant's handwriting and is

written on a sample proposal from company CKID's website, which is available to anyone who accesses the website.

I do not attach any weight to the email from the tenant's witness MC, who did not testify at this hearing due to "tax" evasion reasons. This is despite the fact that the tenant's antiques receipt and the tenant's testimony confirmed that she was charged taxes for purchasing her antique furniture. I prefer and accept the landlords' witness CK's evidence in its entirety, including the fact that MC does not work for company CKID and that CK never sold any furniture to the tenant. I also find it questionable that MC's email indicates that the tenant paid $100,000.00 to purchase the antique furniture, while the tenant's receipt and testimony was that she paid $93,591.65 total. The tenant did not provide any evidence as to why she apparently overpaid $6,408.35 for this furniture.

In the event that my findings are incorrect and the tenant's antique furniture was damaged, I find that the tenant was required to claim this against a tenant's insurance policy. In the tenancy agreement, which the tenant signed, clause 42 states that the tenant carries a "current tenant's insurance and liability policy." The policy indicates that the tenant is required to carry her own insurance to cover any loss or damage from any cause and for third party liability. The agreement specifically states that the landlords will not be responsible for any loss or damage to the tenant's property. The tenant testified that she did not read this portion of the tenancy agreement, which she says the landlord filled out, because the landlord was rushing her to sign the agreement. The tenant confirmed that she did not purchase an insurance liability policy for this rental unit. The tenant claims to be a homeowner since she was 19 years of age and a realtor for over 6 years. I find it improbable that the tenant did not read the tenancy agreement before signing and that she was unaware of her obligation to carry tenant's insurance.

On a balance of probabilities, I find that the tenant has failed to meet her burden to show the existence of loss or damage to her antique furniture. I also find that the tenant has failed to show that any loss or damage was due to the landlord's negligence. I have found that there was no roof leak at this rental unit and even if there was, any leak was not due to the landlords' negligence. I also find that the tenant failed to verify the monetary amount of any such loss, given that I have not accepted her antiques receipt as a valid document. Accordingly, the tenant is not entitled to any compensation for loss or damage to her antique furniture.

Therefore, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed without leave to reapply.

As the tenant was unsuccessful in her entire application, I find that she is not entitled to recover the $100.00 filing fee from the landlords. The tenant must bear the cost of her own filing fee.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant or any occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of $12,850.00 against the tenant as follows:

Item	Amount
Unpaid November 2014 Rent	$5,100.00
Unpaid December 2014 Rent	5,100.00
Unpaid January 2015 Rent	5,100.00
Less Security Deposit	-2,550.00
Recovery of Filing Fee for Landlords' Application	100.00
Total Monetary Award	**$12,850.00**

The landlords are provided with a monetary order in the amount of $12,850.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's entire application is dismissed 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: February 20, 2015

Residential Tenancy Branch