



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC LRE

Preliminary Issues

The Landlord introduced herself and provided her legal first name. Accordingly, the style of cause on the front page of this Decision was amended to include the Landlord's legal first name and was listed as a.k.a. (also known as), pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on March 03, 2015, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to suspend or set conditions on the Landlord's right to enter the rental unit.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony. Neither party submitted documentary evidence in regards to this matter.

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 proven entitlement to monetary compensation?
2. Should conditions be set or suspended on the Landlord's right to enter the rental unit?

Background and Evidence

The undisputed oral evidence was that the Tenant entered into a verbal month to month tenancy agreement that began on September 1, 2013. Rent of \$1,325.00 was due on or before the first of each month and on September 1, 2013 the Tenant paid \$625.00 as the security deposit. The Tenant vacated the property by March 31, 2014, after the Landlord served the Tenant a 10 Day Notice to end tenancy and a 1 Month Notice to end tenancy for cause.

Both parties described the rental property as being a four-plex, a side by side duplex with four rental units, an upper and lower unit on each side of the duplex. The Tenant's rental unit was located in one of the upper units and at the start of his tenancy there were shrubs, flowerbeds, and a lawn in the front yard and a garden and lawn in the back yard.

The Tenant testified that when he moved into the rental unit the front and back yard required cleaning and the lawn was full of weeds. He argued that each time he asked the Landlord to clean up the yard or maintain the yard she refused. He submitted that none of the other tenants were using the yards so he began to clean them up and he put plants in the front and back yard. He argued that he planted 2200 fruit trees in the front yard plus 5000 fruit trees in the back yard which he grew from seedlings, which the Landlord pulled out. As a result he is seeking \$5,000.00 for the destruction of his plants.

The Landlord testified that she attended the rental unit and found that, without her permission, the Tenant had cut down her 6 foot shrubs that had been planted for privacy and he painted the window, exterior of the house and rocks in the front yard. She did not see any plants or trees, as described by the Tenant, and she did not pull out any plants. She argued that the Tenant should have to pay her for the damages he had caused the property, not her paying him.

In closing, the Tenant argued that the Landlord had offered him money to do repairs and paint so he had permission to do the work and because no one was using the yard he weeded it and "over seeded" the lawn. The Landlord dispute the Tenant's closing remarks stating that she did not give the Tenant permission to do any work.

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*.

The Tenant submitted evidence that after he filed his application for dispute resolution, the tenancy ended and he vacated the rental property. His application included a request to seek an Order to suspend or set conditions on the Landlord's right to enter the rental unit. As this tenancy has ended I find the request to set conditions on the Landlord's right to enter the rental unit is now moot, and is hereby dismissed, without leave to reapply.

In this case, the Tenant has the burden to prove he suffered the losses claimed and that they occurred during the course of this tenancy. Upon review of the oral submissions regarding the Tenant's claim for \$5,000.00 monetary compensation, I find the Tenant submitted insufficient evidence to prove he suffered a loss of possessions, namely his tree seedlings, or that those possessions were valued at \$5,000.00. 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. As the only evidence before me was disputed verbal testimony I find there to be insufficient evidence to meet the Tenant's burden of proof. Accordingly, I dismiss the Tenant's application, without leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: April 03, 2015

Residential Tenancy Branch

