



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on January 08, 2015, seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's son, and the Tenant. The Landlord's son initially submitted that he was in attendance only to assist his father with guidance or translation, in the background during the hearing. However, when it came time for the Landlord to present his evidence he requested that his son speak on his behalf. As a result the Landlord's son provided affirmed testimony as the Landlord's agent and he will hereinafter be referred to as Agent. Therefore, as there were two representatives present for the Landlord and each one provided affirmed testimony, terms or references to the Landlord importing the singular shall include the plural and vice versa.

The Residential Tenancy Branch (RTB) Rules of Procedure # 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the **applicant** and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added].

Rules of Procedure # 3.17 provide that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

The Landlord confirmed receipt of the Tenant's application and evidence. The Tenant provided affirmed testimony that he had not received evidence from the Landlord. The Landlords confirmed that they did not serve their documentary evidence upon the Tenant, which is a breach of the #3.15 of the Rules of Procedure. To consider evidence that was not served upon the other party would constitute a breach of the principles of natural justice; therefore, I did not consider the Landlord's documentary evidence. I did

however consider the Landlords' oral submissions. The Tenant's oral and written submissions were considered, as the Tenant's written submissions were served upon the Landlord in accordance with the Rules of Procedure.

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. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

The Tenant submitted undisputed evidence that he initially entered into a verbal tenancy agreement with the Landlord to occupy the "dormer suite" for the monthly rent of \$450.00 payable on the first of each month, with access to one bedroom in the Landlord's suite for storage.

The rental unit was described as being a "dormer suite" which was an attached carport/garage that had been closed in and converted to a small suite. There was a door leading directly from the dormer suite into the basement of the house. The house had two levels with the Landlord occupying the upper level and a separate self-contained suite located in the basement.

The Tenant submitted into evidence a letter which was addressed: To Whom It May Concern, dated and signed by the Landlord on May 29, 2014. The letter listed the Tenant's name, rental unit address, monthly rent of \$450.00 and the security deposit of \$225.00. There was no tenancy start date listed and the Tenant did not sign this letter.

The Tenant testified that the Landlord told him that he could not occupy the suite until the municipality approved the suite for occupation and that approval would not be granted until some painting and repairs were completed. The Tenant entered into a verbal agreement with the Landlord to conduct the required work to assist in getting the dormer suite approved in order for him to occupy the suite as of July 1, 2014. He later agreed to build an outdoor shed purchased by the Landlord to prevent having to store his possessions inside the Landlord's suite. No security deposit was required to be paid in exchange for the labor provided to ready the unit and construct the shed.

The Tenant submitted that when he arrived home on October 2, 2014, the Landlord informed him that three people from the municipality, a police officer, by-law officer, and a building inspector, had attended the house that day to inspect his dormer suite. He argued that it was on that day that the Landlord first told him that the dormer suite had only been approved as an "extension/addition to the existing two bedroom basement suite and not as a separate suite" and should never have been rented to him as a separate self-contained suite with a lock on the shared access door and a fully functioning kitchen.

The Tenant asserted that after the Landlord disclosed that the dormer suite was not approved to be a separate self-contained suite they entered into a verbal agreement that the Tenant would move out in exchange for the return of all the rent he had paid to the Landlord.

The Tenant informed the Landlord he had paid 4 months' rent and not 3, he gave the Landlord copies of the rent receipts, and offered to move into the basement suite until the end of October 2014, at which time he would move to a different location. He said the Landlord refused his offer to occupy the basement suite and told him to leave. The municipality staff inspected the dormer suite on October 7, 2014, and issued an order that the suite be decommissioned and returned to its original state and be used only as a garage.

The Tenant said that on October 11, 2014 the Landlord issued him a 1 Month Notice which listed an effective date of November 11, 2014, for the reason that the unit had to be vacated to comply with a government order. He vacated the property by November 10, 2014 and left the keys with a neighbor.

The Tenant amended his application due to a clerical error, and stated that he now seeks \$4,800.00 compensation which is comprised of a full refund of all rent paid of \$1,800.00, moving expenses of \$500.00, plus \$2,500.00 as compensation for his labour to ready the unit and build the storage shed which he no longer gets the benefit to use. In support of the amounts claimed, the Tenant submitted copies of his rent receipts; an estimate for a moving pod, and a print out of the style of shed he constructed. He confirmed that he had never entered into an agreement to be paid for his labour and argued that given that he had not been told the truth about the requirements for occupation of the dormer suite, he should be compensated for his labor now.

The Landlords testified and disputed all items claimed by the Tenant. They argued that his tenancy was a month to month tenancy which could be cancelled, unlike a lease. They do not believe they should have to return the rent paid as the Tenant occupied the unit and benefited from the services for the period that he paid rent. They submitted that there are numerous illegal suites throughout neighbouring municipalities and if every tenant wanted their rent back it would not be considered.

The Landlords disputed the request for moving costs as the Tenant did not incur costs because he moved himself. The Landlord testified that he paid the Tenant \$100.00 for

cleaning and painting and that he had never agreed to pay the Tenant for any other labour. The only agreement the Landlord said he had made with the Tenant was to pay for the supplies used to paint and prepare the dormer suite and to purchase the shed.

The Landlords confirmed that the Landlord was fully aware of the conditions set by the municipality; which included the dormer suite was to be an extension of the basement suite, as a third bedroom and bathroom, and was not be a separate self- contained suite with a private lock on the common door between the dormer suite and basement suite. The Landlord testified that they had not rented the dormer suite to any previous tenants and submitted that the municipality had heard about the dormer unit somehow, possibly from a neighbour, and the municipality told the Landlord about the required work and how it had to be an extension of the basement suite.

The Tenant argued that the Landlords had not submitted accurate information in their testimony. He pointed to his documentary evidence which included information from the municipality that he had obtained through a freedom of information request and a copy of a note written to him by the Landlord.

The municipal documents provided in the Tenant's evidence included reports from 2013 regarding this Landlord and the dormer suite at this address which confirmed that a previous tenant had been occupying the rental unit, as per the following file entries:

July 17, 2013

2nd suite located in converted garage with bedroom, bathroom, kitchen with hotplate. No common door to main house. ...[redacted information]... Owner was told to give him 2 months notice, as there are no boarders or lodgers permitted as well as a secondary suite. Decommission form was filed out and left with the owner. [reproduced as written]

Sep 20, 2013

Shortly thereafter, contact was made with the tenant [redacted name] and he was advised that he needs to vacate the suite by Oct 5th – as only 1 basement suite is permitted with a residence.

The Tenant submitted evidence of a note written by the Landlord on October 6, 2014 which states:

You were talking about the rent money, you let me know the date your going to be ready to move and I'll have your money for you for your rent. Please return my receipts for the past 3 months... [Reproduced as written].

Tomorrow the inspector is returning Oct 8th the lock between the 2 sides needs to be changed before they arrive...

In the Tenant's written submissions he stated that the Landlord had requested that the Tenant lie to the municipal staff and that he had refused. The Tenant asserted that on

October 7, 2014, he overheard the Landlord tell the municipal staff that the Tenant had actually been living with the basement suite tenant and that he had had a fight with the other tenant so he began to occupy the dormer suite as his own suite. He submitted that he immediately told the truth to the municipal staff, which was he had rented the dormer suite as a self-contained separate unit and he had never resided with the basement suite tenant.

In closing, the Tenant argued that given his personal financial situation he had intended on staying in this rental unit long term, which is why he put so much effort into getting it ready and building the shed. He argued that he is now forced to pay \$770.00 per month rent instead of the \$450.00 he had planned to pay for the dormer suite, which is causing him financial hardship. He also argued that while he may not have used the pod system to move, he did incur costs for his time plus usage and gas for his van to move.

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 conclude that the following standard terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*: The tenancy began on July 1, 2014 for the monthly rent of \$450.00 with a security deposit of \$225.00.

Section 32 of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards **required by law**, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. [My emphasis added].

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

Notwithstanding the Landlords' oral testimony, I accept the undeniable documentary evidence from the municipal file contents, which provides that in July 2013, one year prior to this Tenant occupying the rental unit in July 2014, the Landlord had knowledge that the dormer suite was not to be occupied or rented as a separate self-contained suite. Rather, the dormer suite could only be approved if it was an extension of the

basement suite turning the basement suite from a two bedroom suite into a three bedroom suite.

I further conclude that despite the Landlord being informed of his breach of municipal laws back in July 2013, which caused a different tenant to be evicted, the Landlord made a conscious choice to ignore the requirements of the municipal laws when he rented the dormer suite as a self-contained unit, to this Tenant in July 2014.

I find that the Landlord's actions were an intentional breach of Section 32 of the Act, causing this Tenant to suffer a loss of quiet enjoyment of the rental unit in addition to other costs associated with the stress of moving, the Tenant's time, effort, use of his vehicle, and gas.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

Sections 49 and 51 of the Act stipulate that if a landlord wishes to end a month to month tenancy for his own use, such as to renovate the rental unit in accordance with municipal permits, the landlord is required to give the tenant a 2 Month Notice to end tenancy plus compensation equal to one month's rent.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline # 6 provides that an arbitrator may award aggravated damages where a serious situation has occurred or been allowed to occur. Aggravated damages are damages which are intended to provide compensation to the applicant rather than punishing the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

In determining the amount of compensation awarded to the Tenant, I have considered the Landlords' submissions that: the Tenant had benefited from the use of the suite

during his tenancy; there was no agreement for payment for the Tenant's labor to ready the unit or build the shed; and there was no evidence to prove the actual cost of the Tenant's move.

I also considered that the \$225.00 security deposit was considered to be paid in exchange for the Tenant's labor to ready the rental unit and/or build the shed. Furthermore, at the time the Tenant entered into this tenancy agreement, he did not contemplate that he would have to move out four months later because the Landlord chose to ignore the laws. Therefore, it is reasonable to conclude that if the Landlord had told the Tenant the truth about the laws governing the occupation of the dormer suite, the Tenant may not have put the effort into preparing the suite for occupation, provided the labor to build the shed, and he may not have agreed to rent this suite under those circumstances.

Based on the foregoing, I award the Tenant monetary compensation in the amount of **\$2,675.00** which is comprised of: \$450.00, compensation equal to one month's rent as per section 51 of the Act, plus \$2,000.00 aggravated damages as per Policy Guideline # 6, plus \$225.00 as the return of the security deposit and \$0.00 interest, pursuant to section 38 of the Act.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenant has been awarded a Monetary Order for **\$2,725.00** (\$2,675.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province 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: May 13, 2015

Residential Tenancy Branch

