



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, RR, FF, O, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for the cost of emergency repairs; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by his partner who was available to assist due to hearing problems of the landlord, however the partner did not testify or take part in the proceedings. The parties each gave affirmed testimony and were given the opportunity to question each other with respect to the evidence and testimony provided.

During the course of the hearing it became apparent that the tenant's application included compensation for other than emergency repairs, and pursuant to Section 64 (3) (c) of the *Residential Tenancy Act* I amend the application to include a claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

All evidence and testimony of the parties has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damage caused to the tenant's property?

Background and Evidence

The tenant testified that this month-to-month tenancy began in October, 2002 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per year is payable on the 1st day of October each year. No security deposit or pet damage deposit were collected by the landlord. A copy of a tenancy agreement has been provided showing a tenancy starting on October 1st for one year, and is signed by a landlord and a tenant but is not dated. The tenant testified that it was signed in July, 2015 as required by the Regional District for some sort of legal issue between the landlord and the Regional District. A previous tenancy agreement was also signed by the parties but the tenant has never received a copy.

The tenant further testified that the landlord is away a lot, and the tenant attempted to pay rent a few months ago for the payment required on October 1, 2014, but the tenant wanted to decrease the amount payable for fuel costs and mileage and labor, but the landlord refused the rent stating that he wanted the full amount of \$1,000.00. No rent has therefore been paid, and another \$1,000.00 is required to be paid in a few days.

The tenant testified that an employee of the landlord who is taxed with snow removal of the property had no money to pay for fuel for snow removal, and the landlord was away so the employee approached the tenant and the tenant agreed to acquire fuel so that everyone could have access to their properties. The rental unit is in a resort and there was no one there representing the resort or the landlord at the time. The tenant resides in a cabin on the property and there are about 15 people living on the property full time as well as some part-time and the roads need to be kept clear. The tenant had to travel 30 kilometers to town to get a trailer to haul the fuel, and then transport the fuel and take the trailer back. The ordeal took about 5 hours. The tenant gave the fuel receipt to the employee who gave it to the landlord. The tenant filled the barrel to \$200.00 of fuel and cut it off there. The tenant claims 5 hours and 160 kilometers, and \$180.00 for 2 hours rather than 5 hours. The landlord has not reimbursed the tenant for the fuel costs or the tenant's time. A letter signed by the landlord's employee has been provided which states that the employee approached the tenant to pay for and acquire fuel for emergency snow removal in January, 2015 and the receipts were passed on to the owner. The note is dated July 13, 2015 and signed.

The tenant seeks an order reducing rent by the amount of the tenant's expense claim.

The tenant also testified that the landlord's employee ran over the tenant's truck canopy accidentally, and the tenant claims \$250.00. The tenant is not requesting replacement costs because he found another for that amount. Photographs of the canopy have been provided.

The tenant further testified that he can never find the landlord for months at a time and wants receipts and an address to send future rent payments to.

The landlord testified that he never authorized anyone to buy fuel. The tenant was advised that the landlord was not going to plow that road, and the tenancy agreement doesn't provide for that. The landlord plows the main roads only and the tenant's cabin is off the beaten path. The landlord's employee decides if the road needs plowing. The tenant asked the employee to plow the road and the employee said he didn't have fuel, so the tenant bought fuel which is not the responsibility of the landlord.

On January 6, 2015 the landlord talked to the tenant about overdue rent and the tenant said he was busy but he'd get it to the landlord as soon as he could. Again in February the same thing happened. The tenant showed up in July and offered to pay rent deducting all those items, which the landlord refused and sent the tenant a letter evicting him for unpaid rent. Rent is owed for 2014 and the tenant has 2 lots. One is \$600.00 per year and the tenant hasn't paid that either.

The landlord further testified that no other tenants have complained about snow removal. The landlord's employee is not supposed to, nor is he authorized to plow that road and no other tenants are affected by that road. Another fellow has a spot there but doesn't go there in winter, and he also signed the same agreement showing that snow removal is not included.

The landlord also disputes the letter of the landlord's employee, testifying that the employee can't read or write.

Analysis

In order to be successful in a claim for compensation, the onus is on the applicant to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

I have reviewed the tenancy agreement which states that the tenant is responsible for driveway snow removal. With respect to the roads, I am not satisfied that the tenant or the landlord's employee were authorized to purchase fuel for snow removal at the landlord's expense or that it was an emergency.

With respect to the tenant's claim for damage to the canopy, I am not satisfied that the tenant has established that the landlord is responsible for the mis-hap or that the damage suffered amounts to \$250.00.

In short, I find that the tenant has failed to establish the 4-part test, particularly element 2, and the tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: September 30, 2015

Residential Tenancy Branch

