



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF, MNDC, OPL, ERP

This hearing dealt with an application by the landlord for an order of possession and a monetary order to recover his filing fee. The tenant also filed an application seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to have the landlord comply with the Act, regulation or tenancy agreement, an order to have the landlord conduct emergency repairs for health and safety reasons and an order to recover the cost of filing this application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The landlords gave the following testimony:

The tenancy began on or about February 1, 2012. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. The landlords stated that they require this use of his entire home as their children are older and need more space. The landlord stated that he issued a Two Month Notice to End Tenancy for Landlords Use of

Property on August 5, 2015 with an effective date of October 15, 2015. The landlords stated that the tenant is free to take the appliances as they were purchased by and belong to the tenants. The landlords stated that they adamantly dispute the tenants' claims for labour costs to paint and drywall and re-pipe the house. The landlords stated that they conducted all of the work and that the tenant is attempting to take money from them.

The tenant gave the following testimony:

The tenant stated that the dishwasher, fridge and stove belong to him and that the tenant wants them back. The tenant stated that he wasn't sure if the landlord paid him for the paint and drywall. The tenant stated that he will move out if "the landlord gives me my money today". The tenant stated that he re-piped the entire house for a cost of \$15000.00 in labour and seeks that amount today.

Analysis

I accept the landlord's undisputed testimony and I find that the tenant was served with a notice to end tenancy for landlords' use of property. The tenant did not dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In terms of the effective date, Section 53(2) of the Act allows the Arbitrator to correct the effective date to which is deemed to be the earliest dated that complies with the section; in this case the correct effective date is October 31, 2015. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord and tenant agreed that the tenant is entitled to take the dishwasher, fridge and stove with him when he moves out and is no longer an issue for me to decide in this hearing. In the tenants own testimony he stated he wasn't sure how much the paint and drywall work was and whether he was paid by the landlord and chose to abandon that portion of his claim; accordingly I dismiss this portion of the tenants' application. The tenant also abandoned the portion of his application seeking emergency repairs and accordingly; I dismiss that portion of his application.

The final item in the tenants application is his claim for \$15000.00 worth of labour that he alleges he conducted by re-piping the house. The tenant did not provide any written contract to that effect or photos, time sheet logs to reflect hours and dates worked, receipts for materials or invoices. The landlord adamantly disputes that the tenant did anything except "get in the way of the repairs". The landlord provided receipts of materials and an invoice of plumbing work that was conducted and to which he paid for.

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/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 the balance of probabilities that he is entitled to compensation. As the tenant has not provided any supporting documentation and that the landlord has submitted disputing documentation, the tenant has failed to meet the requirement under Section 67 and I therefore dismiss this portion of the tenants' application.

The tenants' application is dismissed in its entirety.

Conclusion

The landlord is granted an order of possession and a monetary order for \$50.00.

The tenants' application is dismissed in its entirety.

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 08, 2015

Residential Tenancy Branch

