



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNDC, MND, MNR, FF
Tenant: MNDC, FF

Introduction

This hearing dealt with cross applications by the parties for Monetary Orders pursuant to the *Residential Tenancy Act* (the Act). The original hearing of August 30, 2016 and the reconvened hearing was attended by both parties.

The tenant filed on January 21, 2016 for Orders as follows:

1. A monetary Order for loss – Section 67
2. An Order to recover the filing fee for this application - Section 72.

The landlord filed on June 21, 2016 for Orders as follows;

1. A monetary Order for loss – Section 67
2. A monetary Order for damage to the unit – Section 67
3. A monetary Order for unpaid rent – Section 67
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving all the evidence of the other. Despite their abundance of evidence only *relevant* evidence has been considered in the Decision. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The undisputed relevant evidence in this matter is as follows. The tenancy has ended. The tenancy began December 01, 2014 as a verbal agreement for the rental of a house with agreed payable rent of \$1000.00 per month due on the first of each month. The parties agree there was no *move in* mutual condition inspection at the outset of the tenancy and there was no *move out* condition inspection conducted between the tenant and the landlord. The landlord and tenant agree the tenant was not required to pay a security deposit. In addition, the parties agreed that in place of a security deposit the landlord credited the tenant \$500.00 toward remedy of miscellaneous deficiencies in the house and for cleaning the house toward making it suitable for occupation, including some damage to the house.

The disputed relevant evidence is as follows. The tenant's version of events claims the house they occupied was pursuant to a *rent to own* agreement between them and the landlord for an agreed purchase price to which they would pay \$500.00 each month toward a down payment and \$500.00 would be retained by them toward needed repairs to the house. The tenant claims the parties agreed that in the event the arrangement did not advance as agreed the landlord would return \$5000.00 of paid rent back to them.

The landlord's version of events is that the tenant could exercise an option to *rent to own* conditional on factors which did not materialize. The landlord agreed to accept half the rent of \$500.00 from the 6th month onward with the balance of rent retained by the tenant toward materials for an abundance of needed repairs to the house, some structural and including a compromised roof. The landlord denied having an agreement for a eventual refund of paid rent.

The tenancy ended pursuant to a tenant's notice to end tenancy received by the landlord September 29, 2016, stating the tenant would vacate October 31, 2015. The tenant vacated early on October 15, 2015 without notifying the landlord.

Tenant's application

The tenant seeks \$5000.00 they claim was agreed by the landlord if their purchase of the house did not come to fruition. The landlord disagrees. The tenant seeks moving costs of \$2142.00 for purported "wrongful eviction". The tenant testified they felt coerced to abandon the tenancy. The landlord disagrees. The landlord testified they asked the tenant to vacate due to their personal circumstances. The parties agreed that ultimately the tenant provided written notice they were vacating, which was provided into evidence. The tenant also seeks to recover \$2094.47 for the cost of new appliances supplied for the house by the landlord and ultimately retained by the

landlord. The tenant claims the landlord “gifted” the appliances to them as a wedding present. The landlord disagrees with the tenant’s claims entirely, claiming the appliances were required in the house to make it suitable for occupation /renting therefore he purchased them.

Landlord's application

Despite their application particulars, the landlord testified they seek unpaid rent solely for the month of October 2015 in the amount of \$1000.00, acknowledging that the payable rent for September 2015 was effectively satisfied between the parties. The tenant acknowledged they did not pay rent for October 2015.

The landlord acknowledged they actually possess the appliances in dispute, and effectively withdrew their claim for the same amount.

The landlord seeks compensation for miscellaneous costs totalling \$1196.73 which they claim were expended to repair damage caused by the tenant during the tenancy, some of which the landlord claims was the result of vandalism by the tenant. The tenant speculated the landlord likely perpetrated the claimed damage to bolster their application. The tenant testified the house was “a complete mess” when they first occupied it, with missing accoutrements such as shower heads, electrical wall plates, structural deficiencies, compromised ceilings and wall finishes and dilapidated kitchen cabinetry. The tenant testified that despite the failings of the house they applied their efforts in making it better and repairing it on their understanding they were placing equity in their future home. The landlord acknowledged they were not intimate as to the condition of the house before the tenant’s occupied and acknowledged there was, “a fair amount of cleanup . . . to get it rentable”, and therefore reduced the first month’s rent by \$500.00. The tenant claims they left the house in better condition than originally found however acknowledged removing items claimed by the landlord as missing as they themselves supplied them during the tenancy, such as the shower heads and cabinetry pulls.

The landlord provided a series of photo images depicting missing light fixture covers, compromised under sink plumbing, missing electrical wall plates, a broken refrigerator/freezer handle and other deficiencies including missing necessary hoses and vent ducting to major appliances. The landlord also provided images of a broken span of the property fence and compromised shrubbery, as well as an abandoned truck camper left on the property by the tenant, found to be structurally and in other ways compromised.

The landlord testified the house was found vacated and unattended, with doors open for a week after the tenant vacated.

The landlord provided a series of receipts for certain items and repair materials, as well as estimates for general refuse removal in the amount of \$945.00 and for removal and disposal of the camper in the amount of \$1470.00.

The tenant denies they vandalized the residential house and did not address the claimed damage to the residential property or the remaining truck camper, nor the circumstances upon which the house was left at the end of the tenancy. The tenant did not dispute the landlord's evidence the condition of the rental unit weeks earlier on October 01, 2015 was in reasonably unadulterated condition.

Lastly the landlord seeks \$5000.00 as presumptive costs for all other repairs.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

The onus is on the respective parties to prove their claim on balance of probabilities. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

The tenant has not proven their claim the parties entered into an agreement to rent to own or purchase the house and for the landlord to relegate half the rent as the tenant's down payment to that end. I accept the parties may have discussed for the tenant to purchase the house, but there is no evidence establishing the relationship between the parties was one of seller and purchaser during the tenancy. Rather, I find the evidence is that the parties intended a tenancy to exist prior to possibly advancing on an option to transfer ownership of the house. As a result I **dismiss** the tenant's claim for \$5000.00 purported held by the landlord as a down payment. It must be noted that had I found the parties' relationship to be a seller / purchaser one I would be compelled to decline all jurisdiction in this matter.

I find the tenant has not sufficiently proven they are owed compensation for appliances supplied and paid by the landlord for the tenant's use. I have not been provided evidence aptly proving ownership of the appliances ever transferred to the tenant, or

effectively “gifted” by the landlord. As a result I must **dismiss** the tenant’s claim for compensation of the purchase price for the appliances in dispute.

I find that ultimately the tenant ended the tenancy: providing the landlord with their notice pursuant to **Section 45** of the Act stating they were ending the tenancy. The landlord accepted the tenant’s notice to end and the tenant acted on it. As a result the landlord is not obligated to compensate the tenant for their moving costs and I **dismiss** this portion of the tenant’s claim, with the effect that the tenant’s application is dismissed in its entirety.

Landlord’s claim

I find **Section 26** of the Act states that rent must be paid when due unless the tenant has a right under the act to withhold it. The tenant acknowledged they did not satisfy the rent for October 2015 therefore the landlord is owed the unpaid rent. I grant the landlord October 2015 rent in the agreed rent amount of **\$1000.00**.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

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.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other’s non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it

stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find that in the absence of a valid condition inspection report conducted at the start of the tenancy the landlord cannot prove or account for all of the conditions in the unit at the end of the tenancy. I accept the evidence of both parties establishing the house contained some deficiencies before the tenant took possession. I accept the evidence of the parties the landlord allowed the tenant \$500.00 at the start of the tenancy to address some of the deficiencies, and later that the parties agreed the tenant could allocate half the rent to addressing additional deficiencies. In the absence of mutually conducted and completed condition inspections at the start and end of the tenancy I find the landlord's claims and evidence respecting the conditions in the house does not sufficiently prove all the claimed damage was caused during the tenancy or by the tenant.

However, I am satisfied by the tenant's testimony they actively removed fixtures, such as shower heads and other accoutrements added by them during the tenancy. Even if I were to accept that the tenant purchased the fixtures, once installed, they become fixtures of the residential property and the tenant is not entitled to arbitrarily remove them from the house without the landlord's consent. I am satisfied by the unanswered evidence of the landlord that the residential property fencing was removed and that the house was left at risk after the tenant vacated earlier than they notified the landlord and that the tenant left behind a camper yet to be removed by them.

The bulk of the landlord's claim of \$5000.00 is presumptive and speculative. An Arbitrator cannot deal with a presumptive claim as it falls woefully short of the test stated above. None the less, while I accept the landlord's estimate for removal and disposal of the camper, I have not been presented with sufficient evidence to support the basis of an undated estimate for garbage removal.

I have considered the tenant's claim the landlord vandalized their own property, effectively in order to then claim the cost of repairing it, and find the tenant's premise does not make sense. I find the landlord's version of events makes more sense therefore I prefer it, and as a result I find the landlord is owed some compensation for damage and loss.

As a result of all the above, I find that an inclusive amount of compensation in general recognition of all claimed damage and other losses, is appropriate. I set the landlord's compensation in the amount of **\$2500.00**, *without leave to reapply*.

As the landlord has in part been successful they are entitled to recover their filing fee.

Calculation for Monetary Order

Unpaid rent – October 2015	\$1000.00
Damage and loss – nominal	2500.00
Filing Fees for the cost of this application	100.00
Total Monetary Award	\$3600.00

I grant the landlord a **Monetary Order** under Section 67 of the Act in the amount of **\$3600.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application has been dismissed.

The landlord's application in relevant part has been granted, without leave to reapply.

This Decision is final and binding on both parties.

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: November 01, 2016

Residential Tenancy Branch