



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF; MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application against the tenant for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The individual landlord ("individual landlord") named as respondent in the tenant's application did not attend the hearing. Instead, the director of the landlord company (the "landlord"), named as applicant of the cross application attended. The landlord provided a power of attorney document, dated November 1, 2015 from the individual landlord to control and deal with all matters affecting the rental unit, including this tenancy. The landlord indicated that he represents both the individual landlord and the landlord.

The attending parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the director of the landlord company named as applicant in the cross application, and has authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application

or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The tenancy includes a rental unit in the form of rancher style house, carport, garage and two sheds on 1.7 acres of land. As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 8, 2012 on a month-to-month basis. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$600.00 at the start of the tenancy which was returned to the tenant at the end of the tenancy. The tenant vacated the rental unit on May 2, 2016.

The parties agreed that throughout the tenancy the tenant conducted repairs to the property through his carpentry company with the authorization of the landlord. The parties provided three invoices issued between June 12, 2012 and April 8, 2013 totalling \$9,050.72. The parties agreed that the individual landlord has paid the tenant for all invoiced work.

Landlord Claim and Tenant Reply

In the landlord's application filed November 23, 2016, the landlord seeks a refund of \$6,354.57 for what he constitutes as poor and incomplete work which was conducted by the tenant between June 12, 2012 and April 8, 2013.

In reply, the tenant testified that the landlord's application is a duplication of the individual landlord's application made to the Provincial Court of British Columbia on September 22, 2016. A hearing was held in Small Claims Court November 14, 2016 and was dismissed on the grounds of section 58(3) of the *Residential Tenancy Act* and the *Limitation Act*.

It is the tenant's position that he completed the work; the individual landlord paid for the work over an eight month period and that the individual landlord did not raise any

concerns about his workmanship at that time. The tenant also testified that at the end of tenancy the landlord did not raise any concerns with his workmanship; in fact the landlord complimented his work and returned the security deposit in full.

Tenant Claim and Landlord Reply

The tenant seeks a total of \$20,500.00 in compensation. In particular the tenant seeks a past rent reduction of \$400.00 per month for a total of 45 months for a total of \$18,000.00 for the landlord's failure to fix the leaking shed and house roof, to repair the shed stairs, to exterminate rodents and to provide clear water throughout the tenancy. In addition the tenant seeks \$2,500.00 for the time he spent repositioning tarps on the leaking house and shed roofs during the last two years of tenancy.

In reply, the landlord testified that during the tenancy the tenant was paid \$9,050.72 to perform repairs including but not limited to roofing, carpentry, plumbing, pest control and cleaning. Despite these repairs, the tenant contacted the landlord on an undisclosed date and reported the house roof was again leaking. At the request of the tenant, in September 2015, the landlord purchased and provided tarps to the tenant.

Analysis

While I have turned my mind to all the documentary evidence, including emails, miscellaneous letters, photographs, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Landlord Claim

Although section 60 of the *Act* stipulates an application must be made within 2 years of the date the tenancy ends and the landlord's application falls within that time, I find the landlord's application is untimely. I am satisfied that the landlord raised no objection with the quality of the tenant's repair work prior to the tenant's application for a monetary claim, as evidenced by full payment and the return of the security deposit. In failing to bring any objections forward at or near the time of the completed repairs, the landlord did not allow the tenant an opportunity to respond to the landlord's claim. On this basis, I dismiss the landlord's monetary claim in the amount of \$6,351.57.

Tenant Claim

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 this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

While I am satisfied that the rental unit including the sheds contained some deficiencies that over time were reported to the landlord and some subsequently repaired by the tenant, I find the tenant failed to mitigate the loss now being claimed. The tenant failed to seek an order to have the landlord rectify the deficiencies over the 4 year period that he now seeks compensation for. For this reason, I dismiss the tenant's claim.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is dismissed 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: March 22, 2017

Residential Tenancy Branch