



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant, an agent for the tenant, an agent for the landlord and witnesses for the landlord all attended the conference call hearing. The parties were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenant provided documentary evidence to the Residential Tenancy Branch (RTB) and to the other party in advance of this hearing; however, with regard to the landlord's documentary evidence, rules of Procedure 3.15 provides, in part, that to ensure fairness 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 by underlining and bold text].

To consider documentary evidence that was not served upon the other party or the RTB in accordance with the Rules of Procedure would be a breach of the principles of natural justice. Therefore, as the landlord's evidence was not served upon the tenant or the RTB in accordance with Rule of Procedure 3.15, I declined to consider that documentary evidence. I did however consider the landlord's oral testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The party named as the landlord on this application advised that she is an agent for the landlord. This party asked for the landlord's company name to be added to the application and to name her as the agent. The tenant did not raise any objections to this amendment and the Style of Cause has been amended accordingly.

At the outset of the hearing the tenant's agent advised that the tenant had amended his application to include further items to be dealt with regarding an increased amount for a Monetary Order . When a party seeks to amend their application prior to the hearing a party must comply with Rule 4(1) of the Rules of Procedure which states:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

An amendment may add to, alter or remove claims made in the original application.

In this case there is no evidence before me that the tenant or his agent has completed an Amendment to an Application for Dispute Resolution Form or filed that form with the RTB directly or through a Service BC office. Consequently, I will not deal with the tenant's agent's request to amend the tenant's application and only the original application for a claim of \$500.00 will be dealt with today. The tenant is at liberty to file a new application for any other monetary claims.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on November 26, 2009 and this landlord took over the building some time later. Rent for this unit was \$777.00 at the end of the tenancy. The tenant vacated the unit on November 30, 2016.

The tenant's agent SD represented the tenant throughout the majority of the hearing. The tenant's agent testified that in June or July, 2016 she heard from neighbours that the landlord's agent JF took \$500.00 from the tenant for cleaning his rental unit after a treatment was done to eradicate bedbugs in his unit. The tenant's unit was infected with bedbugs and after the first treatment JF dragged in a mattress from another unit and the tenant was then affected by bedbugs again. SD paid two men to take out the mattress and as they moved it they found it was full of bedbugs. The tenant's unit was treated again. SD testified that as the tenant never left his rental unit he could not have brought the bedbugs into his unit. SD agreed that the tenant's unit was filthy, the toilet was really filthy, and the tenant never cleaned or did dishes.

SD testified that instead of the JF being paid to clean the tenant's unit the landlord should have contacted Fraser Health to come in and help the tenant as he is elderly and was not able to keep his unit clean. SD testified that she contacted Fraser Health on behalf of the tenant and they came out to assess him. SD asked them to place the tenant in a home where he could be cared for but they advised there was a waiting list for over a year so they asked SD if the tenant could move in with her and if she could take care of him. SD testified that they found a place together and SD has become the tenant's carer.

SD testified that the tenant has problems with his memory and does not even remember living in the unit and does not remember if he told the landlord when he first found bedbugs in his unit. At first before SD became involved caring for the tenant there was another tenant in the building who SD thinks had Power of Attorney for the tenant. When that tenant passed away a female tenant somehow obtained the tenant's bankcard and she started to pay his rent and do shopping for him using funds from the tenant's bank account. SD testified that when she first got involved she found that all the tenant's money was gone from his bank account as his statement showed amounts of \$500.00 being taken out. At this time the tenant also had no food in his unit. SD referred to the digital evidence provide and states this shows that she taped this female tenant who clearly states she paid \$500.00 to JF for cleaning but did not obtain a receipt.

SD testified that the tenant did authorise the other tenant to pay his rent and buy food and when SD asked the tenant if he had asked this female tenant to pay JF to come in and clean he said he did not remember and he did know he was paying JF to clean his unit. Due to this the tenant's agent believes that JF should not have cleaned the tenant's unit and should not have been paid \$500.00 by this other tenant from the tenant's bank account. The tenant therefore seeks to recover this \$500.00 from the landlord.

SD testified that she did receive photographs from JF and these do show that the tenant's unit is very dirty and that the tenant never cleaned his unit. The other female tenant had informed SD that she was keeping \$100.00's a month from his bank to clean his unit but she has not done so. SD went to the police but they said it was hard to prove the female tenant committed fraud.

JF testified that she was paid \$500.00 from the other female tenant to clean this tenant's unit. When the landlord found out that this tenant had bedbugs again the owner wanted to evict the tenant due to the condition of his unit but JF pleaded with the landlord to give the tenant a chance. The tenant and JF had a conversation in the lobby and the owner of the property was present at that time. The owner asked the tenant

how he can live like this. The tenant unit was extremely dirty, there was stuff everywhere, there were bedbugs, there were thousands of matches from where he smoked his pipe in the unit, the windows on the sliding doors had thick green gloop all the way down them. He only had a few blankets and coats on his bed, there were shopping buggies full of garbage and food waste. The kitchen was filthy with dirty dishes piled up and empty food containers and cans full of mould. In the bathroom there was so much dirt and hair, the countertop could not be seen for the dirt and there was thick dirt on the floor and in and around the toilet.

JF testified that during her conversation with the tenant and the owner of the building the tenant agreed that in order to protect his tenancy, JF could go in and clean his unit and the other female tenant had authorization to pay JF \$500.00 for her work. At the time this work was done SD was not involved with the tenant and would not know what the arrangements were. JF testified that the tenant did sign a document saying he would pay JF \$500.00 to clean his unit; however, JF has misplaced this document. JF testified that she cleaned the tenant's unit in April/May, 2016 and this work took 28 hours. The bedbug company would not go back into the tenant's unit because of its condition prior to it being cleaned.

JF calls her witness MM who is another tenant living on the property. MM testified that she did not actually see JF cleaning the tenant's unit but knows that she did clean it because JF had to cancel plans they had made to do something together because she was cleaning the tenant's unit. MM testified that SD was not involved with the tenant at that time.

The owner of the property provided testimony as a witness and testified that he was at the building one afternoon and the tenant was sitting in the lobby. The tenant asked JF how he could get his unit cleaned because the other female tenant said it was too messy for her to clean. JF suggested getting the Molly Maid Company in but thought it would be expensive and they may decline as it was so dirty. The tenant then said he would pay JF \$500.00 or \$600.00 to clean his unit and did not mind paying this amount

to her. The witness testified that he had seen the tenant's unit and it was very bad. If JF cleaned it for \$500.00 then the tenant was getting a good deal. In the end JF did clean the tenant's unit and was paid for this work although the witness does not know how much JF received.

SD asked JF if the tenant signed a form then SD would like to see that form or a Power of Attorney for the female tenant. JF responded that if she can find it then SD can see it but it has been misplaced. JF testified that whether or not the female tenant had Power of Attorney was none of JF's business.

JF asked the tenant direct questions. JF asked the tenant if he remembers JF cleaning his unit and did he remember her bringing up a piece of paper for him to sign and he signed it leaning against a wall. The tenant responded no sorry he does not remember but he does remember JF cleaning a window. JF asked the tenant if he remembers her cleaning out his bedroom and having to throw out books with bedbugs. The tenant responded no I don't remember.

The Arbitrator asked the tenant if he has problems with his memory and does he remember the female tenant who managed his money. The tenant responded that he does have memory problems a bit and he does remember the female tenant because she was overweight. The Arbitrator asked the tenant if he can remember asking the female tenant to get his food, pay his rent and bills. The tenant responded that she may have brought food and paid his rent out of his bank but he does not remember asking her to pay for other things.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

This matter is primarily to do with the landlord's agent JF cleaning the tenant's unit and being paid to do so. The tenant's agent SD representing the tenant in this matter was

not present for these dealings and only later became involved in caring for the tenant. While I find it is commendable on SD behalf in taking care of the tenant I find that she had no direct knowledge of the events that led up to any arrangements between either JF and the tenant or JF and the other female tenant who was at that time apparently holding access to the tenant's bank account and providing some care for the tenant.

The tenant appears to be suffering from some memory loss and clearly was unable to take care of himself or his rental unit at the time JF cleaned the unit for him. While I have excluded the landlord's photographic evidence from this proceeding I am satisfied from the oral testimony before me that the tenant's unit was in a filthy condition and had bedbugs which needed to be treated. If a tenant is unable to take care of his unit and prepare the unit for bedbug treatments then any treatments are not likely to be successful.

I am satisfied from the oral testimony before me that JF was given permission to go in and clean the tenant's unit and that someone agreed she would be paid for this work. If that person who paid her had the tenant's permission to access his bank account then I am satisfied that there is no fault on the side of JF or the landlord. JF described a conversation with the tenant and the owner of the property has given testimony as to the accuracy of this conversation that the tenant did agree that JF could clean his unit and that she would be paid for this work.

It is always a distressing situation if elderly people are taken advantage of; however, in this case there is insufficient evidence to show that this tenant was taken advantage of or that funds from his bank account were used inappropriately without his permission by the landlord's agent JF. I therefore find the tenant's application to now recover the \$500.00 paid to JF for cleaning his unit, when clearly this work was done to help the tenant, must be dismissed.

I strongly recommend that the tenant's carer SD seeks legal advice as to obtaining a Power of Attorney, if one has not already been obtained, if the tenant is unable to manage his own affairs in order to protect the tenant in the future.

Conclusion

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 01, 2017

Residential Tenancy Branch

