



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, O

Introduction

This hearing was convened in response to an application filed November 10, 2016 by the landlord seeking a monetary order for damage to the unit and for loss under the *Residential Tenancy Act* (the Act), regulation or tenancy agreement.

Both parties were in attendance and fully participated in the conference call hearing. They were given opportunity to mutually resolve the dispute to no avail. The parties acknowledged receiving the evidence of the other. Neither party requested an adjournment or Summons to Testify. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence they wished to present.

Issue(s) to be determined

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence in this matter is that the tenancy started in 2006 and continues. The tenancy is on residential property which contains a house and at least one outbuilding described as a large garage structure at the rear of the property.

The landlord claims the tenant is responsible for an invoice received by the City for an inspection and claims removal of a marijuana grow operation on the residential property and related administration fees for the inspection.

In March 2012 the landlord received an invoice from the City in the amount of \$4360.16 in respect to, "The fees and cost (arising) *out of an inspection of and attendance at the above noted property by the Electrical and Fire Safety Inspection Team (EFSIT) and are imposed under Section 8.1 and 8.2 of controlled Substance Property By-law, 2006. No. 15820*" – as written, with parentheses mine.

The landlord claims the EFSIT invoice is proof the tenant damaged the rental unit and in the alternative the tenant is responsible for the total costs of the inspection.

I have benefit of evidence of the following documents from the parties titled as:

1. Posting of a "Notice of Safety and Inspection Requirement" by EFSIT.
2. "Notice of Safety and Inspection Requirement" Notice.
3. EFSIT Certificate of Electrical Inspection, and
4. Electrical Inspector Checklist and Notes.
5. City invoice in the total of \$4360.16 described as,

controlled substance recovery costs – EFSIT
By-law controlled substance administration fee
Finance technology administration fee

The landlord provided a written narrative into evidence of an inspection on March 29, 2012 concluding there was an "illegal marijuana grow operation" found in the basement of the House. The landlord claims the tenant is responsible for the cost of the inspection and claimed removal of a marijuana grow operation. The landlord testified the City's documentation 'speaks for itself' that the tenant caused damage to the rental unit.

The tenant provided contrasting evidence. The tenant's undisputed testimony is that they were the one who had called BC Hydro in response to their unreasonably high electrical utility invoices. They now know that BC Hydro in turn responded with an inspection by the City's EFSIT (team).

The tenant highlighted that the evidence of a grow operation was not found in the house basement on March 29, 2012 as claimed by the landlord. The tenant referenced that on March 21, 2012 EFSIT found some evidence of a "small" grow operation within the large outbuilding in which the tenant claims they solely use a part as storage for some of their belongings, but to which they do not otherwise or normally access.

The tenant testified the landlord "has never set foot" on the property since outset of the tenancy and therefore cannot credibly relate to any matters occurring on the property or to its condition. They testified having complained to the landlord about the high electrical utility invoices and were told if they did not like it "to get out".

The tenant testified they could not elaborate on the EFSIT report as they did not see the claimed grow operation or that such was removed as claimed by the landlord, however they acknowledge the EFSIT report identifies a small controlled substance grow operation inside an outbuilding. The tenant highlighted the EFSIT report identified "no remediation required" and also indicated "no Hydro disconnection" despite some items requiring correction such as a cover for the electrical panel and securing connections.

The landlord testified the words "controlled substance recovery costs" in the EFSIT invoice clearly relate to removal of a grow operation, and purports to damage.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

In this matter the burden of proving claims of damage and loss rest on the claimant (landlord) who must establish on a balance of probabilities they have suffered a loss due to the tenant's failure to comply with the Act. And, if so established, did the claimant (landlord) take reasonable steps to mitigate or minimize the loss? **Section 7** of the Act outlines the foregoing as follows:

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.

Effectively, the landlord must satisfy all component of the test below:

1. Proof the damage or loss exists,
2. Proof the damage or loss occurred because of the actions or conduct of the respondent in violation of the *Act* or agreement
3. Verification of the amount required to compensate for the claimed damage or loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The landlord bears the burden of establishing their claim by proving the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once established, the landlord must provide evidence verifying the monetary amount of the damage or loss. Finally, the landlord must show that reasonable steps were taken to mitigate the damage or loss incurred.

I do not accept the landlord's portrayal the EFSIT invoice "speaks for itself". I find it is not clear from the evidence exactly what costs the EFSIT invoice describes. I find the EFSIT invoice appears related to an inspection in accordance with a mandate of EFSIT and their invoice aims to recover an abundance of related costs, which are not clearly or sufficiently identified. None the less, on preponderance of the undisputed evidence and balance of probabilities, I find the landlord's written evidence describing a marijuana grow operation found in the basement of the house on March 29, 2012 in sharp contrast to the EFSIT document evidence in this matter

relating to an inspection on March 21, 2012. I accept as reasonable based on the tenant's testimony the landlord is unfamiliar with the residential property. I find the tenant notified the landlord of their high electrical utility invoices. And, I further find the tenant notified BC Hydro of their high electrical utility invoices, which as provided by the tenant, likely resulted in the EFSIT inspection.

Moreover, I find it does not make sense that if the tenant truly was a party to a marijuana grow operation and any related damage they would notify the landlord and BC Hydro of high electrical utility charges to the detriment of the events which followed. But regardless, I find the landlord has not proven the tenant damaged the rental unit or provided any evidence verifying costs to repair damage. The landlord has not proven their evidence relates to damage in the rental unit. The landlord has also not proven evidence relating to conduct by the tenant in contravention of the Act, regulation, or tenancy agreement. I find the landlord has not met the test for damage and loss established by Section 7 of the Act.

As a result of all the above, *I prefer* the evidence of the tenant that there is insufficient evidence of any damage to the rental unit and that the landlord's evidence relates to matters beyond their control or responsibility. I find the landlord has suffered a loss; however it is not a loss for which the tenant is responsible and therefore I must dismiss the application.

Conclusion

The landlord's application is dismissed.

This Decision is final and binding.

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: May 17, 2017

Residential Tenancy Branch