



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their Application requesting a monetary order for unpaid rent, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenant filed for a monetary order for loss of quiet enjoyment of the rental unit, for repairs to the rental unit, for the cost of moving out of the rental unit, for the return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

Issue(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Is the Tenant entitled to monetary relief and return of double the security deposit?

Background and Evidence

This tenancy began on August 1, 2016, with the parties entering into a written, month to month tenancy agreement. The Tenant paid a security deposit of \$357.50 on or about August 1, 2016, and the monthly rent was \$715.00, payable on the first day of each month. Under the terms of the tenancy agreement the Tenant was required to pay for his own electricity and heat.

The Landlord acknowledged that he initially overcharged the Tenant for the security deposit in the amount of \$18.00 as he collected \$375.50 from the Tenant in error. Both the Landlord and the Tenant agreed that the Landlord returned \$18.00 to the Tenant in December of 2016. The Tenant acknowledged cashing this cheque.

The Landlord's Claims

The Landlord testified that he received a notice from the Tenant on the last day of February 2017, explaining that the Tenant was leaving in March of 2017. The Tenant did not pay March rent and returned the keys on or about March 15th to the Landlord.

In evidence the Landlord has submitted a copy of the Tenant's notice to end tenancy. The Tenant's notice is dated February 28, 2017. In the Tenant's notice he explains he is ending the tenancy and plans to move out on March 10, and certainly not later than the end of the day on March 15, 2017. The Tenant states he is ending the tenancy because the Landlord has failed to repair a broken window and window frames, and failed to repay the Tenant for emergency repairs. The Tenant alleges the Landlord was attempting to freeze the Tenant's "person".

The Tenant also alleges the Landlord has threatened and intimidated him and made "death threats" by carrying an illegal handgun and by discharging the handgun in the direction of a building, which I note was not the rental unit. The Tenant sets out that he will not be paying the Landlord any monies until after the hearing of this matter and he refers to the date this hearing occurred, June 2, 2017.

The Tenant testified that on April 1, 2016, he witnessed the Landlord standing next to the Landlord's house, which is approximately 65 feet away from the subject rental unit. The Tenant testified he saw the Landlord take his firearm out and discharge in the direction of a building some distance away. He testified that the Landlord carried the firearm on him and mentioned it on many occasions to the Tenant.

The Tenant testified that he did not report this to the police. He called his lawyer to get advice. The Tenant testified that his lawyer informed him he had to move out right away. The Tenant testified that his lawyer told him he had a right to protect himself.

In reply, the Landlord said he gave the Tenant's notice to the police. The Landlord testified that he was informed by the police that the Tenant made the same claims against his previous landlord. The Landlord denied ever threatening the Tenant and replied that they never even had bad words between them.

The Landlord claims for March 2017 rent in the amount of \$715.00, plus the filing fee of \$100.00. The Landlord requests the security deposit in partial satisfaction of the claim.

The Tenant's Claims

Generally speaking, the Tenant spent a significant amount of time during the hearing alleging the Landlord had a handgun and that he witnessed the Landlord discharge the handgun. The Tenant also focused a great deal of his testimony on the Landlord "reneging" on his promise to repair or replace the window.

The Tenant testified he felt threatened by the Landlord and claims for the cost of moving from the rental unit. He testified he was justified in moving from the rental unit because of the allegations involving the handgun and because the Landlord failed to repair a cracked window in the rental unit which caused a loss of heat in the rental unit.

The Tenant claims \$1,020.00 for the cost of storing his possessions after he moved out of the rental unit. He claims he had to move out in a hurry given his health condition. He claims \$1,130.00 for the cost of labour to move his possessions out of the rental unit. He claims \$104.07 for the cost of renting a moving van. The Tenant initially claimed \$10,000.00 against the Landlord; however, the particulars of what comprised that amount are difficult to understand in his application and he provided little testimony as to a loss in that amount. The Tenant mentions in his particulars that the Landlord was "Manipulative... overcharged security deposit... illegal entry six times... failure to repair window. Landlord knew defective windows existed without disclosure to tenant ... [unintelligible writing] Landlord oral advice to provide repair July 2017, unconscionable until completed."

The Tenant then testified he had initially filed against the Landlord for \$10,000.00 because he was alleging assault by the Landlord due to the incident with the handgun. He went to his lawyer for advice about the discharge of the handgun.

The Tenant explained that he amended his original application, in which he sought the \$10,000.00 claim from the Landlord, and added the claims for the cost of moving and heating related expenses.

The Tenant claims for \$45.87 for insulation and polyethylene film to cover the windows. He claims \$123.10 for the cost of hydro for the period of November 27, 2016, to January 23, 2017, and \$108.08 for the cost of hydro from January 24 to March 13, 2017.

The heating issue was brought to the attention of the Landlord on or about December 5, 2016. The Tenant testified that on November 29, 2016 he noticed there was a crack in the window of the rental unit. The Tenant wrote a demand letter to the Landlord to have the window fixed.

The Tenant testified that he had the temperature set at 55 F in the rental unit but he did not have a thermometer to indicate the actual temperature. He testified there was a cold draft from the window.

The Tenant also alleged that the Landlord entered the rental unit many times without his permission or without giving him proper notice to enter. The Tenant testified that he had no evidence that the Landlord took anything from the rental unit.

The Tenant testified that after the Landlord reneged on his promise to fix the window, the Tenant installed insulation on one of the windows and put a clear plastic film on the other window.

The Tenant claimed for return of double the security deposit as he alleged the Landlord failed to claim against the security deposit within 15 days of the end of the tenancy.

In reply, the Landlord testified that there was a new window in the kitchen of the rental unit and in some other units in the building. He alleged the Tenant was obsessed with the windows in the rental unit and wanted all the windows replaced. The Landlord explained that the crack in the window only affected the inside pane of a double paned window.

I note there were photographs of the cracked window submitted in evidence; however, due to the quality and the locations that the window pictures were taken from, it is very difficult to view a crack in the window. Nevertheless, both parties agree there was a crack in the inside window pane of a double paned window.

The Landlord further testified that when he inspected the window after the Tenant's initial complaint, the Tenant had all the heat turned off in the rental unit. He testified that the Tenant informed him there was residual heat from the heaters even though they were turned off. The Landlord alleged that the Tenant complained about his heating bills, but the Landlord saw nothing wrong with the windows that required repair. He testified that it was just a hairline crack in the interior window of a twin window paned window.

The Landlord further testified that he had never had bad words with the Tenant and only met with him a few times. He denies ever threatening or assaulting the Tenant.

The Landlord explained that he never entered the rental unit without verbal permission from the Tenant or by giving him written notice to enter. He testified he was never in the rental unit without the Tenant being present.

During the course of the hearing, I asked the Tenant if the Landlord had discharged the handgun in his direction and the Tenant testified that he did not. The Tenant testified that the Landlord probably did not see the Tenant watching him at the time the gun was discharged. I also asked the Tenant if the Landlord threatened the Tenant with the gun or otherwise at any time and the Tenant testified that the Landlord had not, but that he made a point of letting the Tenant know he had a handgun. The Tenant felt this was intimidation.

I asked the Tenant if he had reported any of this to the police and he explained he did not because he felt there had been some issues with the police and a previous incident he had with them and a stolen electric bicycle, which caused him to not trust the police. He testified that instead he went to see his lawyer. The Tenant testified he suspected the Landlord may be colluding with a local auction house or thieves because the stolen bicycle had been found at the auction house recommended by the Landlord.

The Landlord explained that when he was in the Tenant's rental unit he noticed there was a lot of materials and various objects there and he suggested to the Tenant he might take them to the auction house to get rid of some of his things.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the claiming party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Landlord's Claims

I find the Landlord has shown that the Tenant breached section 26 of the *Act* by failing to pay rent for the month of March of 2017, for the following reasons.

Under section 26 of the *Act*, the Tenant was required to pay rent to the Landlord for March, even if the Landlord was in breach of the *Act* or the tenancy agreement. The only exceptions to section 26 are where the tenant has an order from the branch allowing a rent reduction; or there was a breach of a material term of the tenancy agreement; or there have been an overpayment of rent; or if the tenant can prove

emergency repairs were required. The Tenant testified that these were emergency repairs he claimed for.

Emergency repairs are found in section 33 of the Act and are described as urgent repairs, necessary for the health or safety of anyone, and are made for the purpose of repairing:

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

If the Landlord refuses to make these repairs or refuses to compensate the Tenant for these, then the Tenant may follow the provisions of section 33, as below:

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

[Reproduced as written.]

In this instance, I find the Tenant has failed to prove that insulating the windows or covering one of them with a plastic film, were emergency repairs as set out above. There was one inside window with a hairline crack, and this was part of a double paned window. I do not find this was a situation of an emergency repair, or where an emergency repair was required.

Nevertheless, even if the Tenant had shown this was an emergency repair situation, which I find it was not, the Tenant could still only reduce the amount of rent payable by the cost of the repairs he made; however, he refused to pay all rent for March.

I will deal with the claims against the security deposit issue in this portion of my decision. I find the Landlord filed his application on time and only claimed against the rent. I do not find the Tenant is entitled to the return of the deposit or to double the deposit for the following reasons.

Tenancies may only end in accordance with the Act, and section 45 of the Act sets out the following:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than **one month** after the date the landlord receives the notice, and

(b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[Emphasis added.]

I also note that under section 53 of the Act incorrect notices to end tenancy automatically correct under the Act. Under section 53 the Tenant's notice to end the tenancy on March 10 or 15, automatically corrects to March 31, 2017, by operation of the law. Therefore, I find that the date this tenancy ended was March 31, 2017. As the Landlord filed against the security deposit on April 4, 2017, I find he filed within the required 15 days of the end of the tenancy. Therefore, the Tenant is not entitled to double the security deposit.

For these reasons, I allow the Landlord one month of rent for March in the amount of \$715.00, plus the filing fee of \$100.00, for a total claim of **\$815.00**. I allow the Landlord to retain the security deposit of \$357.50, in partial satisfaction of the claim and I allow the claim in the amount of **\$457.50**, *subject to any set off of the Tenant's award below*.

Tenant's Claims

Above I have found that the Tenant did not give a correct notice to end tenancy to the Landlord. I further find that the Tenant had insufficient evidence that the Landlord had breached the Act or the tenancy agreement, sufficient for him to have ended the tenancy in the manner which he did.

It was evident to me from the submissions and evidence that the Tenant chose to end the tenancy and chose to move out. I find the Tenant had insufficient evidence to show the Landlord had ever harassed him or intimidated him, and there was insufficient evidence that the Landlord ever assaulted the Tenant. I further find the Tenant provided insufficient evidence to show there was a breach of a material term of the tenancy agreement, pursuant to section 45(3), such that he may have ended the tenancy early.

Therefore, I find the Tenant has not proven he is entitled to any of the moving costs he claimed against the Landlord and I dismiss all those claims without leave to reapply.

I also find the Tenant had insufficient evidence to support a claim of \$10,000.00 against the Landlord. Again, I find the Tenant had insufficient evidence to show the Landlord had ever harassed him or intimidated him, and there was insufficient evidence that the Landlord ever assaulted the Tenant. I also find the Tenant failed to prove the Landlord illegally entered the rental unit.

As described above where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the

party with the burden of proof has not met the onus to prove their claim and the claim fails. Here I find the Tenant had insufficient evidence to prove these claims.

However, I do find that the Tenant has shown that the Landlord has breached section 32 of the Act, by failing to repair the cracked window in the rental unit. The Tenant informed the Landlord that the window was cracked and was causing a loss of heat and the Landlord was under a duty to repair the window. However, rather than move out of the rental unit due to this, the Tenant should have made an application to compel the Landlord to make the required repairs.

Nonetheless, I find the Tenant has shown that he suffered some monetary loss due to the crack in the window. I note the tenancy agreement required the Tenant to pay for heat and electricity, so I do not find that he is entitled to recover all of these costs; however, there appears to have been some loss due to the crack in the window.

If we compare the hearing bill prior to the repairs that were made by the Tenant to the heating bill afterward, there is a slight difference in amounts that are likely due to the extra insulation installed by the Tenant. The heating bill before the Tenant installed the plastic film and insulation was \$123.10 and afterwards it was \$108.08, or a difference of \$15.02. I also find the Tenant had a loss of \$45.81 for the cost of the insulation and plastic film he put over the windows.

Therefore, I find the Tenant has proven a total loss of **\$60.83** due to the Landlord's breach of section 32 of the Act.

I find the Tenant has failed to provide sufficient evidence to support any of his other claims and I dismiss those without leave to reapply. As the Tenant was largely unsuccessful with his claims, I do not award him the filing fee for the cost of the Application.

Having found the Landlord is entitled to the sum of **\$457.50**, and the Tenant is entitled to the sum of **\$60.83**, I set off the claims and award the Landlord the sum of **\$396.67**.

I grant the Landlord a monetary order in this amount which must be served on the Tenant and may be enforced in the Provincial Court of British Columbia.

Conclusion

The Landlord is entitled to a monetary award of **\$396.67**, after deduction of the security deposit awarded to him and the set off the Tenant's award for his losses.

As described above the Tenant failed to pay rent and the Landlord is awarded that amount for March as well as the filing fee.

The Tenant is awarded for a slight loss on his heating bills, although due to the largely unsuccessful outcome of the other claims he made, he is not awarded his filing fee. All the other claims of the Tenant, except for the loss awarded above, are dismissed without leave to reapply.

The Landlord must serve the Tenant with a copy of the order and it may be enforced in the Provincial Court if the Tenant fails to pay the Landlord.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: June 28, 2017

Residential Tenancy Branch