



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RR FF O

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for a retroactive rent reduction, to recover the cost of the filing fee and other unspecified relief.

On May 5, 2017, the tenant, the landlord and an agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. After 58 minutes, the hearing was adjourned to allow additional time to consider all of the evidence and testimony. On July 7, 2017, the parties reconvened and after an additional 42 minutes, the hearing concluded.

At the outset of the hearing, the landlord confirmed that he received the tenant's documentary evidence and that he had the opportunity to review the tenant's evidence prior to the hearing. The landlord confirmed that he did not submit documentary evidence in response to the tenant's application. I find the landlord was served in accordance with the Act.

Preliminary and Procedural Matters

The tenant's digital evidence was not considered as the landlord testified that he does not have a computer and was unable to open the digital evidence as a result. Given the above, I find it would have been prejudicial to the landlord to consider evidence that the

landlord did not have before him and was unable to access during the hearing. As a result, the hearing continued without consideration of the tenant's digital evidence. In reaching this decision I have considered Rule 3.10 of the Rules of Procedure which reads in part:

3.10 Digital evidence

To ensure a fair, efficient and effective process, identical digital evidence and the accompanying printed description must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office.

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

[My emphasis added]

In addition to the above, during the reconvened portion of the hearing the tenant asked the arbitrator to limit the landlord's testimony as she felt that it was not relevant to the tenant's monetary claim as was taking up too much of her hearing time. The tenant was advised that both parties have the ability to testify and that I would intervene as necessary if I felt that testimony was not relevant to the matters before me which had been discussed at the start of the hearing. The tenant was also cautioned that her attempt to control the testimony was not appropriate and that I had afforded both parties leeway in their testimony to ensure a fair hearing for both parties.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- Has the tenant provided sufficient evidence to support that the landlord should be directed to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant provided sufficient evidence to support a retroactive rent reduction under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on February 1, 2010 ended on February 1, 2015 when the tenant vacated the rental unit. Monthly rent was \$1,100.00 per month at the start of the tenancy and was increased to \$1,190.90 per month by the end of the tenancy. Rent was always due on the first day of each month.

The tenant has applied for a monetary claim in the amount of \$8,672.13 comprised as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|---|-------------------|
| 1. Pest control | \$136.50 |
| 2. Pest control and bed bug spray X 2 | \$350.70 |
| 3. Motel stay during pest control | \$125.35 |
| 4. Motel stay during pest control (2 nd treatment) | \$130.11 |
| 5. Movers | \$300.00 |
| 6. Mattress replacement | \$637.28 |
| 7. USB stick for claim | \$25.67 |
| 8. Loss of work | \$520.00 |
| 9. Loss of work | \$520.00 |
| 10. Loss of work | \$260.00 |
| 11. Loss of bed frame | \$750.00 |
| 12. 20% rent reduction due to poor living conditions | \$952.72 |
| 13. 9 months of raised rent | \$818.10 |
| 14. 11 months of raised rent | \$520.30 |
| 15. 4 months raised rent | \$125.40 |
| 16. 5 years at \$500 per year for loss of quiet enjoyment and loss of privacy | \$2,500.00 |
| TOTAL | \$8,672.13 |

At the start of the hearing, the tenant confirmed that she did not have tenant insurance. The landlord did not agree with any portion of the tenant's monetary claim.

Regarding item 1, the tenant has claimed \$136.50 for a pest control invoice. The tenant stated that on January 8, 2015 she had a telephone conversation with the landlord due to what she thought was a bed bug in her rental unit. The tenant claims that she asked

the landlord if he would pay for the bed bug treatment but did not ask to see a bed bug. The landlord vehemently denied that the telephone conversation had occurred.

The tenant then referred to a letter that she claims was sent to the landlord. The landlord denied having ever received the letter other than what was submitted for this monetary claim but not during the tenancy. The tenant claims that she personally served the landlord with the letter on January 9, 2015 but could not recall the time. The tenant claims that she had a witness but that her sister was not available to testify. I note that the tenant did not introduce her sister as a witness at the reconvened hearing date either.

The tenant stated that on January 9, 2015 the landlord attended the rental unit for 16 minutes and verbally assaulted her and sexually harassed her. There was no evidence presented that the tenant called the police this alleged criminal behaviour and no police file was submitted in evidence to support the tenant's testimony. The landlord disputed the tenant's allegations.

The tenant testified that the landlord said the following to her during the walkthrough:

"You are careless and dirty. You are a woman and I am a man. You are not allowed to keep bikes in the laundry room. This is the life that you live [when pointing to a vodka bottle]...you have tattoos, show me your body and tattoos. You want to spank me now?...If you don't like it, move out."

[Reproduced as described by tenant]

The landlord denied making the derogatory comments alleged by the tenant during the hearing. The tenant stated that she eventually gave her notice to end tenancy on December 31, 2014 which was effective for February 1, 2015.

The landlord stated that he was never informed of bed bugs in advance of the treatment that the tenant arranged for herself and without his knowledge. The landlord stated that the tenant was there for five years without any problems and changed boyfriends or roommates so often that it was likely bed bugs brought into the rental unit by the tenant or a guest and that at times the people other than the tenant would use a key they had with them to open the door to the rental unit and bring a bike inside.

The landlord stated that the tenant is not being truthful when she claims that she provided the invoices to the landlord during the tenancy and that he has only seen the

invoices when he was served with the tenant's application and received the tenant's documentary evidence.

Regarding item 2, the tenant has claimed \$350.70 for more pest control costs. The tenant referred to two invoices dated January 12 and January 19 of 2015. The landlord stated that he did not see these invoices until over two years later when he was served with the tenant's application and evidence. The tenant claims that she waited so long to apply for dispute resolution against the landlord as she had no place to go and that she was living in non-suitable living conditions for six months.

The tenant confirms that she did not submit anything in writing to the landlord after January to document the issues and the tenant stated "I stupidly didn't get anything in writing".

Regarding items 3 and 4, the tenant has claimed \$125.35 and \$130.11 for two hotels stays when the unit was being sprayed for bed bugs. The tenant claims that she does not know how the bed bugs got into the rental unit. The landlord stated that he lived there for 20 years between 1956 and 1976 before he began to rent the rental unit and has been renting since 1976 and that there have been no bed bugs since 1956 until the time the tenant alleges there were bed bugs. The landlord blamed the tenant's cats, guests and her lack of housekeeping in what caused the bed bug problem and that the landlord is not at fault. The tenant referred to two receipts from a motel in support of the two amounts being claimed for items 3 and 4 respectively.

The tenant stated that "people don't know where bed bugs come from but I was clean". The tenant did not present photos of her rental unit for my consideration to support that she kept the rental unit clean. The tenant did not provide more than one photo of what the tenant affirmed was a single bed bug in the photo. The tenant referred to the pest control documents that read in part that all occupants must vacate for a minimum of 6 hours and for pets and those that are pregnant for 24 hours. The tenant stated that she rented a motel room as a result. The tenant did not provide any details on whether she attempted to minimize her loss by staying with family or friends versus renting a motel room.

Regarding item 5, the tenant has claimed \$300.00 for the cost for movers. The tenant referred to a receipt which had the date of February 1, 2014 and not February 1, 2015. The tenant stated that the movers dated the receipt with the wrong year but that the receipt had the address of the rental unit and where she was moving to. The tenant stated she paid cash as there was no company name listed on the receipt. The tenant confirmed that she found the movers through a popular online classifieds website. The

tenant confirmed that she did not provide a copy of the classified ad or phone number for the movers in evidence. The landlord's response was that the tenant provided notice she was vacating the rental unit and that he is not responsible for the tenant's moving costs. The landlord also stated that on her last rent cheque she wrote the words "fuck you" on the cheque which the tenant confirmed she did during the hearing.

Regarding item 6, the tenant has claimed \$637.28 for the cost to replace her mattress. The tenant provided a receipt for the amount claimed and stated that the name on the receipt was the name of her father and that he purchased the mattress for her and she had to pay him back. The tenant referred to a letter from her father which supports the tenant's testimony. The landlord's response was that the tenant is responsible for her own belongings and that he does not feel she has proven that he has any liability to pay for her belongings that she discarded and reiterated that the bed bugs were only an issue after the tenant vacated the rental unit as he was not advised during the tenancy and that there was never any bed bugs since 1956 in the home.

Regarding item 7, the tenant claimed \$25.67 for the cost of the USB device for her digital evidence. This item was dismissed during the hearing as there is no remedy under the *Act* other than the recovery of the cost of the filing fee for application preparation and evidence submission.

Regarding items 8 through 10 inclusive, each of these items were claims by the tenant for compensation for lost time off work. As this tenancy was a residential tenancy and not a commercial tenancy, items 8 through 10 inclusive were dismissed during the hearing as I find the tenant is not entitled to such costs under the *Act*.

Regarding item 11, the tenant has claimed \$750.00 for the cost to replace her mid-century bed frame which she stated could not be used due to bed bugs and that she had purchased through the same popular online classifieds website that she hired the movers through. The tenant confirmed that she did not have any receipts to support that she paid \$750.00 for the bed frame. The tenant submitted a copy of an online classifieds ad for a mid-century bed frame in the exact amount of \$750.00 which she writes was similar to her bed frame except her bed frame was nicer.

Regarding item 12, the tenant has claimed a retroactive rent reduction in the amount of 20% of her rent from September 10, 2014 to January 2015. The tenant testified that she reached the amount of \$952.72 by taking \$238.18 and multiplying that amount by four months. The tenant referred to pages three specific pages of her documentary evidence related to incidents that she states she documented between September 8 and October

31 with two incidents occurring on October 31. The tenant was asked if she advised the landlord of these complaints she had documented to which she replied that that “generally before I went to work but that it was pretty random and was in-person”. The landlord denied the tenant’s testimony and stated there were no verbal discussions, in-person complaints as alleged in the documents or phone conversations about these allegations she has written on the pages described above. Other than that, the landlord stated he had “no comment” regarding this portion of the tenant’s claim. The tenant referred to a witness statement from S.W. which the tenant was advised would be of limited weight as the witness S.W. was not present to be cross-examined by the landlord.

Regarding items 13, 14 and 15, all three of these items were dismissed during the hearing as the tenant confirmed that the landlord had issued legal rent increases and she was claiming to have the amount returned as she felt that the rent increases were a way to harass her. The tenant was advised the yearly rent increases under the *Act* are legal and permitted as long as they comply with the regulation and the tenant was not disputing that the rent increases did not comply with the regulation as she confirmed they were legal rent increases.

Regarding item 16, the tenant claimed \$2,500.00 for five years of what she claimed was harassment by the landlord and loss of quiet enjoyment. This item was dismissed during the hearing as the tenant was advised that she breached section 7 of the *Act* which requires that the tenant do what is reasonable to minimize the damage or loss when applying for compensation under the *Act*. The tenant was advised during the hearing that by waiting for five years before applying for compensation and allowing such a claim to increase to \$2,500.00 that I found the tenant failed to comply with section 7 of the *Act*.

Analysis

Based on the documentary evidence, the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 what was reasonable under the *Act* to minimize the damage or loss.

In this instance, the burden of proof is on the tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable 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.

Items 1, 2, 3 and 4 – I will deal with items 1, 2, 3 and 4 as all four items relate specifically to the tenant's claim related to bed bug pest control and motel costs for two nights at a motel during two pest control spray treatments. Firstly, I note that during the five year tenancy, the only time in which the tenant alleges there were bed bugs was during the last month of her five year tenancy. I have carefully considered all the evidence presented and the testimony before me. I find the tenant has provided insufficient evidence that the landlord was responsible for the presence of bed bugs in the rental unit and that more likely than not I find that the bed bugs were either introduced into the rental unit from the items brought into the rental unit that the tenant confirms she purchased used through a classifieds website or through items brought

into the rental unit through a roommate or guest which the tenant is responsible for as the tenant is responsible for all guests during the tenancy.

I find the tenant has provided insufficient evidence that the tenant communicated in writing with the landlord regarding bed bugs and did not provide the landlord sufficient time to address bed bugs before vacating the rental unit and as a result, these items are dismissed due to the tenant failing to prove part one of the test for damages or loss under the *Act*. At the very least, I would have expected the tenant to provide photos which show a clean rental unit and proof that she wrote to the landlord regarding the bed bugs so she could prove the landlord was aware and had the opportunity to arrange for treatment. I also find the tenant's testimony to be vague as specific dates were not provided regarding alleged phone conversations with the landlord. As a result, I dismiss items 1, 2, 3 and 4 due to insufficient evidence without leave to reapply.

Item 5 - The tenant has claimed \$300.00 for the cost to hire movers. While I accept that the year listed on the receipt submitted in evidence by the tenant was likely an inadvertent error, I find that due to the tenant giving notice to end the tenancy herself, that the tenant has failed to prove part one of the test for damages or loss under the *Act*. Therefore, I dismiss this portion of the tenant's claim in full without leave to reapply, due to insufficient evidence.

Items 6 and 11 – Regarding item 6 and 11, the tenant has claimed \$637.28 for the cost to replace her mattress for item 6, and \$750.00 to replace her bed frame for item 7; however, the tenant confirmed that she did not have tenant insurance during the tenancy. Consistent with my findings regarding items 1, 2, 3 and 4 above, I am not satisfied that the bed bugs were caused by any actions of the landlord and as a result, I find the tenant failed to comply with section 7 of the *Act* by failing to have tenant insurance to protect her personal property. The landlord is not the tenant's insurer and I find the tenant failed to minimize the damage or loss of her personal property by failing to purchase tenant insurance. I also note that the decision to discard her mattress and bed frame versus having them heat-treated or treated in some other manner was a decision made by the tenant and is not the fault of the landlord. Given the above, I dismiss these portions of the tenant's claim due to insufficient evidence, without leave to reapply.

Item 7 – As described above, this item related to the cost of a USB device was dismissed during the hearing as there is no remedy under the *Act* other than the recovery of the cost of the filing fee for application preparation and evidence submission. I will deal with the filing fee later in this decision.

Items 8 to 10 - Each of these items were claims by the tenant for compensation for lost time off work. As noted above, as this tenancy was a residential tenancy and not a commercial tenancy, items 8 through 10 inclusive were dismissed during the hearing as I find the tenant is not entitled to such costs under the *Act*.

Item 12 - The tenant has claimed a retroactive rent reduction in the amount of 20% of her rent from September 10, 2014 to January 2015. After carefully considering the evidence presented by the tenant and the response of the landlord, while I am not satisfied that the tenant has provided sufficient evidence to support that she lost 20% of the use and enjoyment of the rental unit between September 8 and October 31, I am satisfied based on the landlord's response of "no comment" that the tenant's witness statement supports that some form of rent reduction is warranted as I afford the witness statement some weight. Therefore, I award the tenant **\$200.00** as a nominal amount to compensate the tenant for a nominal loss of use and enjoyment for the time period claimed. I dismiss the remainder of the amount claimed without leave to reapply.

Items 13, 14 and 15 – As described above, all three of these items were dismissed during the hearing as the tenant confirmed that the landlord had issued legal rent increases and she was claiming to the increased amount returned as she felt that the rent increases were a way for the landlord to harass her. I find that the tenant has provided insufficient evidence that a rent increase constitutes harassment as Part 3 of the *Act* allows for rent increases under the *Act*.

Item 16 – As described above, the tenant claimed \$2,500.00 for five years of what she claimed was harassment by the landlord and loss of quiet enjoyment. This item was dismissed during the hearing as the tenant was advised that she breached section 7 of the *Act* which requires that the tenant do what is reasonable to minimize the damage or loss when applying for compensation under the *Act*. The tenant was advised during the hearing that by waiting for five years before applying for compensation and allowing such a claim to increase to \$2,500.00 that I found the tenant failed to comply with section 7 of the *Act*. Based on the above, this portion of the tenant's claim is dismissed without leave to reapply due to insufficient evidence.

As the tenant's application is partially successful, I grant the tenant the recovery of their filing fee in the amount of **\$100.00**.

Given the above, I find the tenant has established a total monetary claim of **\$300.00** comprised of \$200.00 for item 12 plus the recovery of the cost of the \$100.00 filing fee. The remainder of the tenant's claim has been dismissed.

I grant the tenant a monetary order pursuant to section 67 and 72 of the *Act* in the amount of **\$300.00**.

Conclusion

The tenant's application is partially successful.

The tenant has been granted a monetary order pursuant to sections 67 and 72 of the *Act*. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: July 14, 2017

Residential Tenancy Branch