Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed October 31, 2016 wherein the Tenant sought monetary compensation from the Landlord in the amount of $7,418.07, for compensation for damage or loss under the *Act,* other unspecified relief and recovery of the filing fee.

The hearing was held by teleconference on May 3, 2017 and adjourned to June 15, 2017 and August 24, 2017. Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me. At the August 24, 2017 hearing the Landlord was assisted by legal counsel.

The matter was originally adjourned due to the late delivery of the Landlord's evidence and a cross application which filed by the Landlord and then cancelled without notice to the Tenant. By Interim Decision dated May 3, 2017 I directed the parties to exchange evidence in advance of this hearing. At the hearing on June 15, 2017 the Tenant stated that he had filed evidence on May 31, 2017; that evidence was not before me and was not considered in making this Decision. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the continuation of the hearing on August 24, 2017 counsel for the Landlord submitted that the Tenant should be barred from proceeding with his application as she submitted he had filed outside the two year time limit imposed by section 60 of the *Act,* which reads as follows:

> **60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

The parties agreed that the tenancy ended on October 31, 2014. Counsel for the Landlord stated that the information she received from the branch was that the Tenant applied on November 1, 2016.

Branch records indicate that the Tenant applied for Dispute Resolution and paid his filing fee on October 31, 2016. The records also indicate he filed at a service B.C. Office and the receipt included in the Branch records does not indicate when the fee was paid, only that the Tenant's application materials were sent by fax to the Branch at approximately 3:11 p.m.

Counsel for the Landlord further submitted that paragraph 14(6) of the residential tenancy agreement provided that the tenancy was to end at 1:00 p.m. on the date the tenancy ended. She submitted that if the Tenant applied for dispute resolution after 1:00 p.m. on October 31, 2016 he should be statute barred from making his application as the tenancy ended at 1:00 p.m. on October 31, 2014.

I am unable, based on the evidence before me to determine whether the Tenant applied and paid his fee before or after 1:00 p.m. on October 31, 2016.

Notably, section 60 provides that an applicant must make their application "within" two years of the end of the tenancy.

Section 25 of the *Interpretation Act* provides as follows:

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

(5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

(6) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month.

(7) A specified time of day is a reference to Pacific Standard time, or 8 hours behind Greenwich mean time, unless Daylight Saving time is being used or observed on that day.

> (8) A person reaches a particular age expressed in years at the start of the relevant anniversary of his or her date of birth.

Subsection 25(4) is specific with respect to the words required to trigger the usage of that subsection. While the use of the more restrictive word "within" suggests that section 60 might be interpreted pursuant to section 25(4), I find that the appropriate subsection is 25(5), as the word "within" is not specifically referenced in 25(4). Therefore, and pursuant to section 25(5) above, I find that October 31, 2014 must be excluded and October 31, 2016 included in any calculation of time, such that I find the Tenant applied within the two years required by section 60.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming this fixed term tenancy began December 1, 2013 and was to end December 1, 2014. The Tenant paid rent in the amount of $1,400.00 per month.

In the Details of Dispute Section the Tenant confirmed that he sought:

> "Claim for damages and loss of personal items, clothing, family souvenirs, etc. From flood and water pipes breaks and mold and contaminated water supply and fixtures and health issues".

At the hearing on May 3, 2017 the Tenant testified that he sought the sum of $7,418.02 for the following:

Cost to replace items	$3,155.00
Storage costs	$881.40
Moving costs	$500.00
Two months' rent at $1,400.00 per month	$2,800.00
cost to launder his clothing	$81.57
TOTAL	$7,418.07

The Tenant stated that as a result of prior flooding, the rental unit had mould issues which in turn damaged his clothing and personal effects. He stated that the mould was rampant through the closets in the main bedroom and the hallway closets. He claimed that most of his items were stored in proper bins, but some were cardboard boxes. He testified that these water issues started in September of 2014, and spread rapidly and that he first became aware of the mould in October of 2014 shortly before ending his tenancy. The Tenant also stated that the water smelled like "rotten eggs" but he did not notice the smell of the mould.

The photos submitted by the Tenant showed clothing covered in significant mould. He claimed that the photos were taken shortly before the tenancy ended. He stated that he was about to take everything to the dump and realized that he should be taking photos of the items. He stated that the items were not salvageable and were therefore discarded. The Tenant testified that all of his clothing was in the rental

unit although some of his items were stored in the basement. He claimed that the Landlord offered that he could store his items in the basement.

The Tenant stated that the water was not safe and drinkable from the taps and that as a result he suffered health issues. He submitted photos of the toilet showing what appeared to be rust stains in one toilet and black stains in another. He also submitted photos of the dark water coming out of the kitchen faucet.

The Tenant stated that the Landlord was well aware of the moisture and water problems in the rental unit. In support he provided a letter from the landlord dated October 2, 2014 in which the Landlord apologized to the Tenant for what he had to deal with and confirming they were aware of the problems he had faced.

The Tenant moved out in the rental unit on October 31, 2014 and applied for dispute resolution on October 31, 2016. He said that his "computer crashed" and he was not able to salvage all the photos until two years later.

The Tenant confirmed stated that he sought compensation for damaged items, as well as his storage and moving costs after the tenancy ended. He stated that he moved from the rental unit to his boat and as such paid for storage of his items until he could find alternate accommodation.

The Tenant also sought compensation for breach of quiet enjoyment equivalent to two months' rent. He stated that the basis of this was due to the constant interruption during the tenancy due to the water issues, the health issues related to the contaminated water, and the mould.

The Tenant stated that he has a medical condition such that he has "iron overload". He stated that this was exacerbated by the condition of the water, and that his iron was four times the "legal limit".

In response to the Tenant's claims, the Landlord, F.A., testified as follows.

She stated that when the Tenant approached them and asked to rent the rental unit they originally asked for $2,000.00 per month, and the Tenant asked for the rent to be reduced because he said he would look after the property and he would be the "best tenant they ever had". She stated that when he moved in he assured the Landlords that he was a professional painter, was very capable, that he had boats and he was able to deal with any issues, including servicing the water pump.

The Landlord stated that by way of an addendum to the tenancy agreement the Tenant was obligated to regularly maintain and service the water treatment system. She claimed that he failed to attend to this, and that is why the water turned the colour it did. She stated that the water pump servicing is as simple as pouring salt into the brine tank and checking the UV bulb to make sure it was functioning. The Landlord stated that this was written on the addendum and he was also instructed on how to maintain the system by her husband, J.A.

The Landlord stated that it was a surprise when she received the Tenant's Application as they certainly didn't expect it, particularly more than two years after the tenancy ended (she claimed she received his application in late November 2016). She further testified that at no time did he claim that the rental unit was not livable, or that his right to quiet enjoyment was negatively affected. She further stated that the Tenant never asked them to do anything to repair the rental unit, although they did compensate him for his time when he took care of odd jobs. She stated that at one point in time they told him to stop making

repairs and to call them first, no matter what time of day it was, and he refused and continued working on the property. She also stated that they told him he could end the tenancy earlier than the end of the fixed term, yet he chose to stay.

F.A. stated that the Tenant emailed them right before he gave notice to end the tenancy to say that his items had been damaged. He said that his photos had been damaged as well as some of his clothes. F.A. stated that she immediately questioned him as to why he would store his items in the crawlspace in cardboard boxes as they had told him there were water issues, the ground was gravel, and more importantly here was an overflow tube that pours water onto the ground from the water treatment system brine tank when the tank is too high. She stated that when her husband showed him how to maintain and service the water system, her husband spent a considerable amount of time showing the Tenant the overflow pipe, such that he would have known there was moisture in this area.

F.A. further noted that the crawl space was not part of the rental unit, nor was any storage supplied. Notably, the tenancy agreement makes no mention of any storage at the rental unit. F.A. also testified that they made the Tenant aware of the conditions of the crawl space, the overflow pipe for the brine and the fact this area was not dry. She also stated that her husband put wood on the gravel floor for his own use and to store his tools as well as appliances that were not being used at other rental units. She reiterated that this was not to be used by the Tenant for storage of his items.

Counsel also submitted that the Tenant failed to make his best efforts to minimize loss as required by section 7 of the *Residential Tenancy Act* as he stored his items in the crawlspace/basement area despite knowing it has flooded in August 2014 (as evidenced by email communication from the Tenant to the Landlord on that date).

Counsel also stated that the evidence submitted by the Tenant relating to his claim for the cost of laundry was past the date when the tenancy ended.

Counsel also submitted that in terms of the Tenants claim for a breach of quiet enjoyment, the Landlord stated that she did not receive any information from the Tenant about any alleged health issues, such as increased iron issues. Counsel also noted that the Tenant did not provide any evidence to support his claim that he has health issues, such as notes from doctors, etc.

In reply the Tenant testified that the storage area was a half-finished full height basement with a partial concrete floor and partial gravel floor. The Tenant stated that he was shown the basement by the Landlord, F.A., who told him that he could use the area as storage. The Tenant confirmed that the storage was not provided for on the tenancy agreement, which he conceded was “his mistake”. He also stated that the Landlord was in the area repairing after a flood for some time and was aware that the Tenant’s items were there. The Tenant stated that his items were in bins and cardboard boxes and the Landlord moved them around while he was jackhammering and fixing the basement.

The Tenant stated that the clothes were not stored in the storage area, but were stored in the closet. He claimed that the water issues were a result of the mould and water issues in the basement as a result of the lack of insulation.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Tenant sought compensation for items which he claims were damaged in the rental unit. Photos submitted by the Tenant confirm many of his personal items were significantly covered in mould. The Tenant stated that some of his items were stored it the basement area and some in his closets. He testified that he had a verbal agreement with the Landlord, J.A., to store items in the basement area.

The tenancy agreement makes no mention of storage.

F.A. submits that the Tenant stored his items in an unfinished crawl space, which was prone to moisture issues and that in doing so he knowingly and recklessly put his items at risk. She testified that the Tenant was aware of the prior flooding, as well as the location of the water system overflow pipe which created moisture issues in this space. She testified that one of the conditions of his tenancy was that he would regularly maintain the water filtration system. She stated that as a result, he was trained by her husband, J.A., as to the steps required to maintain the system as well as the location of the brine tank overflow pipe in the basement area.

In an email from the Tenant to the Landlord dated August 1, 2014 he writes that the concrete floor had flooded in the basement area where the water treatment system was located. In an email dated October 1, 2014 he confirms that his “precious and irreplaceable family photos and memoirs” were destroyed by a leaking pipe and faucet in the basement ceiling.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenant has failed to prove the losses relating to his damaged items are the result of the actions or neglect of the Landlords in violation of the *Act* or the tenancy agreement.

I do not accept the Tenant's evidence that the items depicted in his photos were stored in the rental unit. Had that been the case, the smell of the mould would have been overpowering and would have alerted the Tenant to the moisture problems within the rental unit. I find it more likely those items were stored in the basement/crawlspace as alleged by the Landlord. I find that the basement/crawl space area was not part of the tenancy agreement. I further find that the Tenant was aware of the moisture issues, yet stored his sentimental and valuable items in this area. It is unexplainable why the Tenant would not have moved his items immediately after the flooding in August of 2014 as he was aware of the moisture issues. In failing to do so, I find the Tenant is responsible for the damage to his items.

The Tenant seeks compensation for breach of his right to quiet enjoyment alleging that he suffered health issues as a result of the tenancy. The Landlord testified that until the Tenant gave notice to end the tenancy she was unaware of any health concerns he may have. The Tenant failed to submit supporting evidence from his medical professionals to support a claim that he suffered health issues as a consequence of the condition of the rental unit. In his October 1, 2014 email to the Landlord he writes that he has "stomach flews and GI issues, not to mention effect of the high iron on [his] genetic hemochromatosis disease"; yet, curiously, the next day he sent an email to the Landlord informing them that he was not planning to move. Had his health issues been as severe as he claimed, it is inconceivable that he would wish to continue his tenancy.

The evidence indicates the parties had an arrangement whereby the Tenant did odd jobs for which he received compensation from the Landlords. Email communication between the parties confirms the extent of these jobs. I accept the Landlord's evidence that one of the requirements of the tenancy was that the Tenant would maintain the water filtration system and that he was trained by the Landlord J.A. to attend to this maintenance. Had the Tenant required assistance with the system, it was incumbent on him to inform the Landlords.

The photos submitted by the Tenant suggest the water was darkened and stained the toilet and sink. Communication from the Tenant to the Landlord confirms the Tenant was concerned with the quality of the water. However, neither party submitted any evidence as to the safety of the water at the time of the tenancy.

Submitted in evidence by the Landlord was a letter dated January 20, 2017 when the water treatment system was replaced; in this letter, the writer J.W., informs that while the system was replaced, the previous system at the time of install was effectively removing iron and manganese and disinfecting as required.

The difficulty with the Tenant applying for dispute Resolution so long after the tenancy ended is that the Landlords were not afforded notice that the Tenant intended to make a claim. As such, they were not able to provide contemporaneous evidence of the condition of the water at the relevant time.

In all the circumstances, I find that it is likely the water system was not sufficiently treating the water during the tenancy; however, I am not able to find that the water was unsafe. Further, I am unable to make a finding as to whether the condition of the water was due to the Tenant failing to honour his obligation to regularly maintain the system, or whether the system was flawed. More importantly, I am

unable to find that the Tenant suffered a loss as a result of the condition of the water, and that his alleged losses were the result of the actions or neglect of the Landlords in violation of the *Act* or the tenancy agreement.

The Tenant failed to submit any supporting medical evidence to establish a causal connection between the water condition and his alleged health issues. I therefore find he has failed to prove any related losses.

As noted during the hearing, a tenant is not entitled to recover storage, moving costs, and rental costs after a tenancy ends. Tenants are not guaranteed perpetual occupation, and as such, when a tenancy ends they may incur the cost of moving their items, storage costs, and further rent. These costs are not recoverable under the *Act.*

Conclusion

I find the Tenant has failed to meet the burden of proving his claim and I therefore dismiss his claim for monetary compensation from the Landlord.

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*.

I acknowledge that this Decision is being delivered more than 30 days after the conclusion of the hearing. This is in part due to the voluminous nature of the parties' evidence, the duration of the hearing (which occupied 190 minutes over the course of three days), as well as my annual holidays. I confirm that the validity of my Decision is in no way affected by the fact the Decision has been rendered after the 30 day period provided for in section 77 of the *Act.*

Dated: September 29, 2017

Residential Tenancy Branch