



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASC PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MND MNR MNSD FF
Tenant: MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application is dated November 14, 2016 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord’s claim; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on October 26, 2016 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.P., an agent, who was assisted by C.T., a lawyer. The Landlord provided five witnesses: T.K., L.K., E.P., P.B., and T.G. The Tenant attended the hearing on his own behalf. Everyone who attended the hearing and provided oral testimony provided a solemn affirmation.

Service and receipt of the parties' Application packages and documentary evidence was acknowledged. Neither party raised any further issues with respect to service or receipt of these documents. The parties were provided with a full opportunity over the course of the four hearing dates to present evidence orally and in written and documentary form, and to make submissions to me. The oral and written evidence before me that met the requirements of the Rules of Procedure has been given full consideration. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
6. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 11, 2008, and ended when the Tenant vacated the rental unit on October 31, 2016. At the end of the tenancy, rent in the amount of \$801.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$380.00, which the Landlord holds pending the outcome of this hearing.

The Landlord's Claim

The Landlord's monetary claim was set out on a Monetary Order Worksheet, dated November 17, 2016, attached to which was a breakdown of the Landlord's claim. First, the Landlord claimed \$801.00 for unpaid rent for the month of November 2016. According to the Landlord, the Tenant did not provide adequate notice to end the tenancy. There was no dispute that the Tenant vacated the rental unit on October 31, 2016, which was when his notice to end the tenancy was provided to the Landlord.

The Tenant submitted he was entitled to end the tenancy early as a result of repeated breaches of material terms of the tenancy, pursuant to section 45(3) of the *Act*. Included with the parties' documentary evidence was a copy of the Tenant's notice to end tenancy. The letter described several issues that, according to the Tenant, amounted to a breach of a material term of the tenancy agreement. Specifically, the Tenant claimed the Landlord repeatedly failed to repaint

the suite, re-carpet the suite, and caulk the bathroom basin. In written submissions provided by the Tenant, he described problems with a leaking kitchen faucet, peeling bathtub enamel, unserviceable linoleum, and the presence of a bee's nest outside the window of the Tenant's rental unit.

The Tenant's letter referred to above also claimed the Landlord's actions throughout the tenancy gave rise to a loss of quiet enjoyment of the rental unit. Those allegations are described more thoroughly below as part of the Tenant's Application. However, the Tenant testified in his response to this aspect of the Landlord's claim that the Landlord has engaged in "violence, harassment, and discrimination". Specifically, the Tenant testified to his belief that a hole created in the ceiling by a worker who was on the roof to address an accumulation of water was intended to "intimidate" him to vacate the rental unit and constituted an "assault". In support, the Tenant referred me to a video clip that was included with his digital evidence. It depicted the Tenant on the roof of the rental property, asking questions of roofing workers. One worker is heard saying his foot went through the roof. In response, the Tenant stated, "[the Landlord] is trying to evict me out of all these people...and now my roof has a hole in it."

In addition, the Tenant referred me to his written submissions, which described an incident when he left a recliner on the sidewalk outside the rental property. An agent of the Landlord asked the Tenant to remove it, but he refused. The Tenant testified the exchange was "heated", but that he tried to disengage.

Further, the Tenant testified the Landlord's agent, L.K., said "nice eye you got there" when he saw the Tenant had a black eye. The Tenant found this to be offensive as he had just undergone a surgery to remove a skin cancer.

The Tenant provided an additional example of what he described as threatening behaviour on the part of the Landlord. He testified that, in May 2011, he temporarily placed a table in his assigned parking stall. The Landlord's agent, L.K., asked him to remove it. The Tenant submitted the unequal application of rules was unfair and that the Landlord "just picked on me." The Tenant referred me to photographs and correspondence included with his documentary evidence.

Finally, the Tenant testified to his belief that a notice to end tenancy for landlord's use of property was "discriminatory". He testified that notices to end tenancy were not issued consistently by the Landlord. Although there was no dispute that rent was paid late, the Tenant submitted that the Landlord failed to deal with Tenants equally, which amounted to discrimination. I was referred to three audio files, submitted with the Tenant's documentary evidence. The first is a recorded telephone conversation with an agent of the Landlord regarding a notice to end tenancy for unpaid rent. In it, the Tenant pointed out alleged flaws in the notice and questions whether or not issuance of a notice to end tenancy was standard policy. He told the representative that he was "feeling some discrimination and hostility." The representative was empathetic and provided him with advice regarding payment. The second

was a recorded telephone conversation with the same representative of the Landlord. During the conversation, the Tenant asked for details about where the notice to end tenancy originated. The third is a recorded conversation where the Tenant confronts a representative of the Landlord over the origin of the notice to end tenancy and threatens legal action.

Second, the Landlord claimed \$50.00 for general cleaning and \$60.00 to replace blinds. In support, C.T. referred to a move-in condition inspection report and various photographs depicting the condition of the rental unit. Also relied upon by the Landlord was a receipt in the amount of \$110.00 for these expenses.

In reply, the Tenant stated the rental unit was cleaned extensively, although he conceded some items were not cleaned. The Tenant also testified that he removed and thoroughly cleaned the blinds before vacating the rental unit, leaving them in a pile in the rental unit. He testified to his belief that repairs were to be completed and that there was no point in replacing them.

Third, the Landlord claimed \$150.00 to replace a patio screen door. C.T. referred to the move-in condition inspection report, photographs of the damage to the screen door, and an invoice for \$134.40.

In reply, the Tenant acknowledged some damage but suggested the screen door had likely been there for a long time and that the damage was in the nature of normal wear and tear.

The Landlord also sought to recover the filing fee paid to make the Application, and applied for an order that the security deposit be applied to any monetary award made.

The Tenant's Claim

During the hearing, legal counsel for the Landlord submitted the Tenant's claims for reimbursement of various expenses incurred during the tenancy were incurred in preparation for a previous dispute resolution proceeding and should not be allowed. The Tenant agreed to withdraw these aspects of the Tenant's Application. Accordingly, the only aspects of the Tenant's Application considered in this Decision are the claims for \$23,000.00 for what he submitted was harassment and intimidation by the Landlord, and for recovery of the filing fee.

The Tenant claimed \$23,000.00 for what he argued amounted to harassment and intimidation by the Landlord. In addition to the Tenant's testimony provided in response to the Landlord's claim, he referred to a number of factors that justify such an award. The Tenant submitted that a notice to end tenancy, addressed in previous proceedings, was the genesis of "four months of hell" leading to the present dispute. The notice to end tenancy purported to end the tenancy on the basis that the Landlord required vacant possession of the rental unit to deal with water ingress, mold, and asbestos. He alleged the notice to end tenancy was not issued by the Landlord in good faith.

The Tenant also testified to his belief that the Landlord's evidence was fabricated because there was no known damage until a worker's foot broke through the roof and ceiling. He suggested this event was intentional because the Landlord now had evidence of the presence of asbestos, justifying the replacement of much of the Tenant's ceiling.

In reply, the Landlord acknowledged the worker's foot broke through the Tenant's ceiling. I was referred by C.T. to the affidavit of P.B., dated September 21, 2016. In it, P.B. deposed that on November 10, 2015, while working on the roof of the rental property, some wood strapping gave way and his foot broke through the ceiling of the Tenant's apartment. He deposed that he immediately knocked on the door and apologized, offering to clean up any debris. He also deposed that the Tenant would not permit him to enter and clean the Tenant's apartment. The Tenant denied this evidence, suggesting that video evidence confirmed T.G. did not do as he indicated in his affidavit.

In addition, the Tenant alleged negligence on the part of the Landlord. He stated the Landlord did not meet the obligation to repair and maintain during the tenancy by permitting the condition of the roof to deteriorate. The Tenant also expressed concern about the delay in repairs to the roof and ceiling as a result of previous dispute resolution proceedings. The Tenant referred to a number of photographic images of the roof, which depict water pooling in different areas. However, he criticized the use of a trench to temporarily deal with the problem as part of a "reckless scheme" and submitted it was not effective. Further, the Tenant suggested that the worker stepping through the roof and ceiling placed him in a position of danger. The Tenant testified that the behaviour of the Landlord and the Landlord's agents engendered feelings of fear and insecurity.

The Tenant also referred to documentary evidence submitted by the Landlord, The first was a copy of a hand-written letter of complaint regarding noise from the Tenant's rental unit at night. The Tenant noted the letter had been redacted to prevent the identification of the writer. The second document was a type-written Breach Letter from the Landlord to the Tenant regarding the complaint. The Tenant submitted the letter was an act of retaliation as he had filed an application for dispute resolution only days before.

The Tenant also alleged the Landlord discriminated against the Tenant. As noted above, the Tenant did not dispute that the rent was not paid when due, due to an error. Neither was it disputed that the Landlord issued a notice to end tenancy for unpaid rent or utilities. However, the Tenant submitted that the Landlord discriminated against him by issuing the notice without trying to resolve the matter by discussing it with him, as had been done with other tenants.

If final submissions, the Tenant stated he was justified in "upping and leaving" because of the Landlord's breach of a material term of the tenancy agreement. In addition, he submitted he is entitled to compensation for loss of quiet enjoyment and "physical and mental torture" he has endured, as summarized above.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for unpaid rent in the amount of \$801.00, I find the Tenant vacated the rental unit without adequate notice, as required under section 45(1) of the *Act*, which states:

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.*

[Reproduced as written.]

The Tenant argued he was justified in ending the tenancy without providing notice pursuant to section 45(3), which states:

If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

[Reproduced as written.]

I find there is insufficient evidence before me that the Landlord failed to comply with a material term of the tenancy agreement. Rather, the incidents referred to by the Tenant appeared to reflect circumstances where the Landlord was exercising rights and obligations under the *Act*. Accordingly, I find the Landlord is entitled to a monetary award of \$801.00 for unpaid rent.

With respect to the Landlord's claim for general cleaning (\$50.00), replacement of light bulbs (\$60.00), and replacement of a patio door (\$134.40), I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$244.40, supported by receipts and the Tenant's acknowledgement that some cleaning was required at the end of the tenancy and the screen door was in need of repair. I also note Policy Guideline #1 confirms that tenants are responsible for replacing light bulbs in his or her premises during the tenancy.

In light of the above, and having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Landlord's Application, and is entitled to retain the security deposit held in partial satisfaction of the claim. Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary award of \$765.40, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$801.00
General cleaning:	\$50.00
Replacement of light bulbs:	\$60.00
Replacement of patio door:	\$134.40
Filing fee:	\$100.00
LESS security deposit:	(\$380.00)
TOTAL:	\$765.40

The Tenant's Claim

With respect to the Tenant's claim for \$23,000.00 for a loss of quiet enjoyment, section 28 of the *Act* confirms that this right includes "reasonable privacy...freedom from unreasonable disturbance...exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit*]

restricted]...[and] use of common areas for reasonable and lawful purposes, free from significant interference”.

Policy Guideline #6 elaborates on the meaning of a tenant’s right to quiet enjoyment. It states:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant’s rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. While the Tenant undoubtedly feels wronged by the Landlord's actions, I find the examples provided do not represent "a course of repeated or persistent threatening or intimidating behaviour" as contemplated under Policy Guideline #6. For example, section 46 of the *Act* confirms a landlord is entitled to issue a notice to end tenancy for unpaid rent or utilities when rent remains unpaid on any day after the day it is due. That the Landlord might have resolved another tenant's rent payment issue differently is irrelevant. Section 26 of the *Act* confirms rent must be paid when due.

As a further example, section 32 of the *Act* requires a landlord to "provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." In this case, the Landlord was taking steps to address water accumulation on the roof of the rental property. Unfortunately for the Tenant, this work may have impacted his rental unit more than others. However, I find that the Landlord's failure to address the presence of water on the roof in a way that was satisfactory to the Tenant is not a breach that is contemplated under section 28 of the *Act* or Policy Guideline #6.

After careful consideration of the Tenant's submissions and evidence, I find the Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Landlord is granted a monetary order in the amount of \$765.40. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 8, 2017

Residential Tenancy Branch