



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LONG LAKE LIFESTYLES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPL MNDC O
Tenant: CNL MNR MNDC FF O

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 was received at the Residential Tenancy Branch on September 26, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated August 31, 2017 (the “Two Month Notice”);
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on September 15, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling the Two Month Notice;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Landlord was represented at the hearing by S.D., an agent. The Tenant attended the hearing on his own behalf. Both S.D. and the Tenant provided a solemn affirmation at the beginning of the hearing.

Both S.D. and the Tenant testified the parties' respective Application packages were served on the other by registered mail. Both S.D. and the Tenant acknowledged receipt of the packages. Pursuant to section 71 of the *Act*, I find the parties have been sufficiently served for the purposes of the *Act*.

Neither party raised any issues with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to 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.

Preliminary and Procedural Matters

At the beginning of the hearing, both S.D. and the Tenant confirmed that the Tenant vacated the rental unit on or about October 31, 2017. Accordingly, the Landlord's request for an order of possession and the Tenant's request for an order that the Two Month Notice be cancelled have not been considered further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to an order granting recovery of the filing fee?
3. Is the Tenant entitled to a monetary order for the cost of emergency repairs?
4. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on December 1, 2015. As noted above, the tenancy ended on or about October 31, 2017, at which time the Tenant vacated the rental unit. A security deposit of \$600.00 was returned to the Tenant.

The Landlord's Claim

The Landlord's monetary claim was set out in a Monetary Order Worksheet, dated September 25, 2017. First, the Landlord claimed \$2,090.44 to replace laminate flooring with carpet in the rental unit. According to the Tenant, he woke up on July 30, 2017, and discovered water on the floor. He testified it was coming through the cracks in the laminate flooring. He contacted the Landlord immediately, who arrived at the rental unit in about an hour. S.D. confirmed that P.D. gave the Tenant authorization to remove the kitchen flooring to expose the moisture underneath the laminate flooring. However, the Tenant removed more flooring in the unit than anticipated. A Home Depot receipt was provided in support.

Second, the Landlord claimed \$750.12 for repairs to the drywall and moldings removed by the Tenant. A Home Depot receipt was provided in support.

In reply, the Tenant testified that he was given authorization to address the leak in the copper piping, and to remove flooring wherever water might be an issue. He indicated that he followed the water under the flooring and stopped removing the flooring when there was no water present. He also noted there was no benefit to him for removing more flooring than necessary.

I note that the Landlord deducted \$265.00 from the above invoices for toilet repairs that were not caused by the Tenant.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee paid to make the Landlord's Application.

The Tenant's Claim

The Tenant provided written submissions outlining his monetary claim. First, the Tenant claimed \$170.00 for work he performed to expose and address the leak in the copper pipe. On behalf of the Landlord, S.D. agreed with this aspect of the Tenant's claim.

Second, the Tenant claimed \$400.00 for various landscaping work he completed at the rental property. Although he was approved for up to 20 hours per month, he testified that he worked 72 hours in July and August 2017, but was not compensated for the additional time.

In reply, S.D. testified that while the Tenant kept his own area looking presentable, she was at a loss to confirm what other work he did. She referred to an email from the previous owner, which suggested the Tenant was not diligent in his yard maintenance duties.

Third, the Tenant claimed \$845.92 for the 34 days in which his rental unit was “below standard and unsanitary. He testified the Landlord told him to stop with the remediation work that had been authorized by P.D., which he did, but that the Landlord did not take reasonable steps to make repairs quickly.

In reply, S.D. testified that she tried to get contractors in to address the condition of the rental unit but that the Tenant refused to allow access. According to S.D., this had the effect of reducing credibility in the eyes of contractors and she had difficulty getting them to return. She also noted that the problem with the condition was, in part, due to the Tenant having removed more flooring that was authorized or required.

Finally, the Tenant claimed \$100.00 in recovery of the filing fee paid to make the Tenant’s Application.

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

The Landlord claimed \$2,575.56 for costs S.D. testified were incurred because the Tenant did more work than authorized or necessary to address a leak in the Tenant's rental unit. In these circumstances, I find there is insufficient evidence before me to satisfy me the Landlord is entitled to the relief sought. On behalf of the Landlord, S.D. confirmed the Tenant was authorized to address the leak and remove flooring in the rental unit. However, there was no evidence to suggest the Tenant was instructed not to remove flooring other than in the kitchen. Rather, I find it would have been reasonable for the Tenant to proceed with exposing flooring based on the Landlord's authorization. The Landlord's Application is dismissed, without leave to reapply.

The Tenant's Application

The Tenant claimed \$170.00 for work he performed to address the leak in the rental unit. On behalf of the Landlord, S.D. agreed with this aspect of the Tenant's claim.\

With respect to the Tenant's claim for \$400.00 for landscaping and maintenance work he completed, I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. Other than his oral testimony, I was not referred to any documentary evidence that would support the work he says he completed in July and August 2017. In addition, the hours for which the Tenant seeks to be paid were in excess of the standing number of hours per month. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for \$845.92 for a reduction of rent for 34 days, I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. It appears the condition of the rental unit was a result of the Tenant's own efforts. In addition, I accept the testimony of S.D., who advised that the Tenant did not allow workers into the rental unit, causing delays. This aspect of the Tenant's Application is dismissed.

Having been partially successful, I grant the Tenant recovery of the filing fee. Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$270.00, which is comprised of \$170.00 as agreed to by S.D., and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The Tenant is granted a monetary order in the amount of \$270.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 7, 2017

Residential Tenancy Branch