



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0916516 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's Application made September 20, 2017: MNDC

Landlord's Application made October 2, 2017: MNR; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenant seeks compensation for damage or loss under Sections 32, 51 and 67 of the Act. The Landlord seeks a monetary award for unpaid rent and to recover the cost of the filing fee from the Tenant.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the parties served each other with their Notice of Hearing documents and documentary evidence.

Issue(s) to be Decided

Is the Tenant entitled to compensation in the form of rent abatement for restriction of services and one month's free rent for the Landlord's failure to comply with Section 51(1) of the Act?

Is the Landlord entitled to unpaid rent for the month of October, 2015?

Background and Evidence

There was no written tenancy agreement between the parties; however, they agreed that they had an oral tenancy agreement, and that the tenancy began on July 1, 2014. The Tenant testified that the tenancy ended on September 30, 2015. The Landlord testified that the tenancy ended on October 2, 2015. The parties agreed that monthly

rent was \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00.

In January, 2017, the parties attended a hearing on the Tenant's Application for Dispute Resolution seeking return of the security deposit and compensation for the Landlord's failure to comply with Section 38(1) of the Act. The arbitrator granted the Tenant's Application and awarded him double the amount of the security deposit and recovery of the cost of the filing fee, for a total of \$900.00. The Landlord has not paid the Tenant any of the money, as ordered on January 16, 2017.

The Tenant now seeks compensation, alleging that the Landlord did not provide services and facilities and "unhygienic conditions" in the rental property. He testified that the heating system did not work in the rental unit so he had to purchase space heaters. He stated that some of the electrical outlets did not function and that there was no smoke alarm in the rental unit. The Tenant testified that there were "holes in the walls, broken doors, loose doorknobs, broken mirror and other defects". He stated that the common areas were also filthy and had blood on the walls and human urine on the outside pavement. The Tenant seeks rent abatement in the amount of \$850.00 for loss of services and facilities and the Landlord's failure to comply with Section 32 of the Act.

The Tenant also seeks compensation because the Landlord "failed to compensate me properly when requesting me to vacate the suite for personal use". The Landlord gave the Tenant a "letter saying he was going to move in" but did not issue a Notice to End Tenancy under Section 59 of the Act, for the Landlord's personal use of the rental unit.

The Tenant provided photographs of the rental property and copies of letters and notes between the parties.

The Landlord submitted that the Tenant "did not ask me to make repairs, this is new to me". He also stated that he has receipts for work done at the rental unit; however, the

Landlord provided no documentary evidence.

The Landlord seeks a monetary award in the amount of \$850.00 for unpaid rent for the month of October, 2015, because the Tenant "moved out October 2, 2015 without providing written notice to end the tenancy".

Analysis

Regarding the Tenant's Application:

Section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must 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.

[Reproduced as written.]

I accept the Tenant's documentary and oral evidence that he advised the Landlord of required repairs and the unhygienic conditions in and around the rental property. I find that the Landlord did not comply with Section 32 of the Act and that the Tenant is entitled to compensation as sought, in the amount of \$850.00.

Section 51(1) of the Act provides:

Tenant's compensation: section 49 notice

- 51** (1) A tenant **who receives a notice to end a tenancy under section 49 [landlord's use of property]** is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[Reproduced as written, my emphasis added.]

In this case, the Tenant did not receive a Section 49 Notice to End Tenancy from the Landlord and therefore I find that he is not entitled to compensation under section 51 of the Act. This portion of his Application is dismissed.

With respect to the Monetary Order dated January 16, 2017, the Tenant's remedy is to serve the Landlord with the Order and to enforce it in the Provincial Court of British Columbia (Small Claims Division).

Regarding the Landlord's Application:

I dismiss the Landlord's Application for a monetary award for unpaid rent for October, 2015, for the following reasons:

- 1) When a party seeks compensation under Section 67 of the Act, that party must show that he suffered a loss and also that he took all reasonable steps to minimize that loss. The Landlord provided insufficient evidence of the steps he took to make repairs and re-rent the rental unit for all or a portion of October, 2017. Therefore, I find that the Landlord did not provide sufficient evidence to support such a claim for compensation.
- 2) I find that the tenancy ended on September 30, 2015, not on October 2, 2015. The Decision dated January 16, 2017, provides, "The parties testified that the tenancy ended when the Tenant moved out on September 30, 2015."

The Landlord's Application has been unsuccessful and therefore I dismiss his claim for recovery of the cost of the filing fee.

Conclusion

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

The Tenant is hereby provided with a Monetary Order in the amount of **\$850.00** for service upon the Landlord. This Order may be enforced in the Provincial Court of British Columbia (Small Claims Division).

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: May 15, 2018

Residential Tenancy Branch