



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, LRE, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 23, 2018 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had permission to speak on behalf of the landlord named in this application, who is his mother, as an agent. The landlord provided written authorizations to this effect, with this application. This hearing lasted approximately 72 minutes. I note that the tenant presented his submissions for most of the hearing time at approximately 45 minutes, as compared to the landlord who presented his submissions for approximately 5 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package. The landlord confirmed that he consented to me considering

the tenant's evidence, which consisted of hundreds of pages of documents and digital files, even though he received some of it late on September 23, 2018, just four days before this hearing. Therefore, I considered all of the tenant's evidence despite it being late, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to increase his monetary claim from \$5,550.00 to \$10,664.08. The landlord consented to this amendment during the hearing, stating that he received the tenant's latest monetary order worksheet for this amount and reviewed all of the tenant's evidence. Therefore, I considered the tenant's increased monetary claim based on the landlord's consent, even though the tenant did not properly amend his application by filing the proper RTB form to do so.

Both parties agreed to settle a portion of the tenant's application, except they were unable to settle the tenant's monetary claim for \$10,664.08 which includes the \$100.00 application filing fee, so I made a decision regarding the tenant's monetary claim only.

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of the tenant's dispute.

Both parties agreed to the following final and binding settlement of portions of the tenant's dispute:

1. Both parties agreed that this tenancy will end by 5:00 p.m. on September 30, 2018, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that the landlord's 1 Month Notice, dated August 23, 2018, was cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing, except for the tenant's monetary claim for \$10,664.08 which includes the \$100.00 application filing fee.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the tenant's monetary claim. Both parties affirmed at the

hearing that they understood and agreed to the above terms, free of any duress or coercion. These terms are legal, final, binding and enforceable, which settle all aspects of this dispute, except for the tenant's monetary claim.

The tenant applied for a total monetary claim of \$10,664.08 including the \$100.00 application filing fee. I made a decision regarding the tenant's monetary application because the parties were unable to reach a settlement on that claim.

Background and Evidence

While I have turned my mind to the documentary and digital evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant stated that this month-to-month tenancy began in August 2008 until he moved out in July 2011 and then he returned from June 2013 to present. The landlord agreed with the years of tenancy but could not recall the specific months. Both parties agreed that a security deposit of \$275.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties agreed that they did not sign written tenancy agreements, only verbal agreements were reached.

The tenant seeks a monetary order of \$10,664.08, including the \$100.00 application filing fee.

Analysis of Tenant's Monetary Application

Despite the fact that the tenant submitted a voluminous amount of evidence with his application, which included hundreds of pages of letters, photographs and digital files, he hardly made reference to these documents during the hearing. At multiple times during the hearing, he stated that I should estimate and determine what his loss would be by going through his documents, rather than explaining why he applied for the specific amounts that he did. In his verbal submissions during the hearing, the tenant chose to tell a lengthy narrative, which lasted approximately 45 minutes, of his family issues, medical issues and his entire experience with his landlord over the past 8 years of his tenancy, rather than justify the monetary amounts that he applied for.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$10,554.08, without leave to reapply.

During the hearing, I notified the tenant that his claims for \$198.40 in lawyer fees, \$31.20 for travel expenses to meet his lawyer, and \$35.68 for the cost of the 16 GB and 32 GB SD evidence cards for this hearing. I informed the tenant that the only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

During the hearing, I notified the tenant that his claim for \$148.80 for theft and vandalism related to his SD cards and motion detector camera were criminal charges that only the police could deal with under the Criminal Code of Canada. The tenant said that he brought these claims to the police but they decided not to pursue criminal charges because it was such a small amount being claimed. I notified him that the RTB only deals with tenancy-related matters, as it is not a Court able to deal with criminal charges.

I find that the tenant was unable to justify the remaining \$10,150.00 amount being claimed. I find that the tenant failed parts 1 and 3 of the above test. The landlord disputed the tenant's claims.

The tenant was unable to justify the \$2,200.00 which he said was four months of rent at \$550.00 per month, for "harassment campaign of me and 1 guest." He did not justify the amount being claimed or explain how he arrived at that figure, indicating that his claim was worth more than that amount. The tenant did not file any criminal charges against the landlord for harassment, despite the fact that he said he is comfortable dealing with the police and has done so regarding other issues with this landlord and his own personal issues.

The tenant was unable to justify the \$2,500.00 which he described was for "multiple bouts of non-pecuniary incidents." The tenant stated that because the landlord locked

the back entry and access for his mobility scooter, he suffered damages. He stated that he looked up other cases but could not find any comparable ones to his claim. He said that he used a figure of \$50.00 per hour, then claimed it was \$100.00 per day, for each hour and day of pain that he suffered as a result of having to use the front door, rather than the back entry. He claimed that he suffered at least four hours of pain each time. However, his calculations did not add up or make sense. He explained that this claim was actually worth \$5,000.00 to \$6,000.00 but he reduced his claim to \$2,500.00.

The tenant was unable to show that \$4,950.00 was for an “illegal \$50.00 monthly utility charge for washing machine.” The tenant stated that he paid this charge from the beginning of his tenancy in August 2008 until he moved in July 2011 and then again when he moved back in from June 2013 until August 2018. He claimed that utilities were supposed to be included in his monthly rent but the landlord demanded that he pay an additional \$50.00 per month to use his portable washing machine at the rental unit. He claimed that he has not paid this charge for September 2018 yet. He said that he was under “duress” and “forced” to pay this by the landlord or he would have to live on the streets with his daughter since the landlord would evict him. The landlord stated that the rent was always \$550.00 and the tenant does not pay an additional utility charge, but the tenant voluntarily agreed to pay an additional \$50.00 per month beginning in June 2017. The tenant denied this, stating that he only agreed to pay the additional \$50.00 per month to the landlord to help her financially for a couple of months, not for the entire tenancy. I find that the tenant voluntarily paid this amount to the landlord, as I find that he cannot be forced or under duress for 8 years to pay an additional charge of \$50.00 per month.

The tenant was unable to justify the \$500.00 amount for the “harassment, stress, worry, lack of sleep” that he says he suffered due to the “forced illegal removal of pet and harm.” The tenant agreed during the hearing that he did not provide medical records to show that he suffered the above medical conditions as a result of his pet guinea pig being removed from his rental unit for what the landlord said was a temporary 3-4 week period before the tenant brought the pet back into the unit.

As the tenant was unsuccessful in the monetary portion of his application and he settled the remainder, I dismiss his application for the \$100.00 filing fee without leave to reapply.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 5:00 p.m. on September 30, 2018. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 5:00 p.m. on September 30, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 1 Month Notice, dated August 23, 2018, is cancelled and of no force or effect.

The remainder of 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: September 28, 2018

Residential Tenancy Branch