



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC LRE MNDCT OLC OT PSF RP RR

Introduction

This hearing was convened in response to an application filed by the tenant on July 11, 2018 seeking Orders under the *Residential Tenancy Act* (the Act). At the outset of the hearing the tenant advised they vacated the rental unit 3 days before this hearing. As a result, not all of the tenant's claims on application remain relative to this matter. The tenant sought the relative balance of claims as follows.

- A Monetary Order for compensation for loss under the Act, regulation or tenancy agreement – Section 67
- An abatement of rent for repairs, services or facilities agreed upon but not provided – Section 65

The remainder of the application is dismissed without leave to reapply.

Both parties participated in the hearing and provided testimony. The landlord acknowledged receipt of the tenant's application and evidence. The landlord did not submit document evidence to this matter. Both parties were provided opportunity to settle their dispute to no avail. They were also provided opportunity to present all relevant evidence and testimony during the hearing in respect to the claim, provide witnesses, and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were informed that only *relevant evidence* would be considered toward a final and binding Decision. The hearing proceeded on merits of the tenant's monetary claim.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

The burden of proving loss rests on the claimant tenant.

Background and Evidence

This tenancy started June 01, 2017 and has since ended. The parties agreed there was a written tenancy agreement of which I have benefit. Rent of \$1075.00 was payable monthly. It is undisputed the rent was inclusive of standard appliances and in particular relevance to this proceeding included of a stove and laundry appliances. At the outset of the tenancy the tenant paid deposits of which the parties agreed the landlord retains \$500.00 in trust.

The tenant claims \$325.00 for what they explained is a combination of claimed expenditures made and reduction in the value of the tenancy agreement. The landlord largely disputed all of the tenant's claims *other than the tenant's claim of \$40.00* for laundromat fees, with which they agreed.

- 1). The tenant claims that they paid \$50.00 to other individuals to move appliances (stoves) within the residential property. The landlord generally disagreed with this claim.
- 2). The tenant testified that they were without the use of an electric stove for a period of 16 days as its use repeatedly tripped the electrical service. The parties disagreed with the tenant's version of facts primarily in respect to the number of days the tenant was without use of a stove before the landlord eventually installed a gas fuelled stove which and replacing the electric stove. The tenant is claiming \$5.00 per day for lack of a stove for a sum of \$80.00. The landlord testified that they were out of country when the stove issues began and the tenant notified them of the problem; however, despite their efforts and those of a neighbour in attempts to maintain service to the stove the tenant's likely use of all elements on the stove resulted in the repeated tripping of the breakers for the stove.
- 3). The tenant claims that during the tenancy the were without a functioning washing machine for 31 days. The parties did not dispute that a washing machine was included in the payable rent. The tenant claims they went to their neighbour during the period the washing machine was unavailable. The landlord did not effectively dispute the lack of a working washing machine for which the tenant seeks \$5.00 per day for a sum of \$155.00. The landlord questioned the tenant's claimed based on \$5.00 per day as reasonable compensation. The tenant argued they were paying rent in part to have an operating washing machine for the subject period and that it was not available to them,

during which time they were inconvenienced in having to make other arrangements for their laundry.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

The onus is on the respective applicant to prove their claims on balance of probabilities. On preponderance of all evidence submitted I find as follows.

The applicant tenant must satisfy each component of the following test established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Relevant to this matter the test established by **Section 7** is as follows,

1. Proof a loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the Act or the tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant (tenant) followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of loss in this matter, and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once established, the tenant must then provide evidence verifying the actual monetary amount of the loss. Finally, the tenant must show that

reasonable steps were taken to address the situation toward mitigating or lessening the loss incurred.

In respect to the tenant's claim for moving appliances I find that in the absence of proof they paid \$50.00 the tenant's claim fails the above test derived from Section 7 of the Act. As a result I must **dismiss** this portion of their claim, without leave to reapply.

In respect to the tenant's claim for absence of a functioning stove, I find that the landlord does not dispute the stove tripped the electrical breakers on more than one occasion which then were reset with the aid of a neighbour. I also accept the landlord's evidence that in response to the electrical stove issues the landlord then installed a gas fuelled stove. I further accept the landlord's testimony that they were absent for a period in which the stove did not operate as intended, but moreover that the tenant was indeed present. I find it likely that before a gas stove was fully installed the tenant endured 16 days without a stove. I find that overall I prefer the account of the tenant that the stove did not operate due to electrical issues and that it was 16 days before they had a functioning gas stove. I further find the tenant's claim of \$5.00 per day for lack of a stove is not extravagant. As a result, I grant the tenant's claim for **\$80.00**.

I find that the landlord did not dispute the tenant's claims of an inoperable washing machine of that the tenant did not have a washing machine available for the claimed period of 31 days. As a result, I accept the tenant's claim that a washing machine was included in the rent, and that in its absence they should be compensated. Again, I accept that the tenant's claim is not based on an unreasonable formula. Therefore, I grant the tenant abatement of rent of **\$155.00** for loss of use of the washing machine.

As the parties agreed in respect to the tenant's claim of **\$40.00** for laundromat fees, I will grant this amount to the tenant.

The tenant's award is the sum of all fractional entitlements herein in the total of **\$275.00**.

It must be noted that any security deposit held by the landlord must be administered in accordance with the Act.

Conclusion

The tenant's application in part which is relevant is granted, and the balance of their application is dismissed, without leave to reapply

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$275.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision and Order is final and binding.

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 04, 2018

Residential Tenancy Branch