Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* (*"Act"*) for a monetary order in the amount of $5,750.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the cost of the filing fee.

The tenant, the landlord and a support person for the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

Neither party raised any concerns regarding the service or receipt of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant was advised that although he applied for a monetary claim of $5,750.00, he submitted a Monetary Order Worksheet 19 days before the hearing which indicates that he was seeking $6,550.00. As the tenant failed to amend his application prior to the hearing in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") the tenant was advised that the limit of this claim would remain at the original $5,750.00 as I find the landlord would be unfairly prejudiced by the tenant's attempt to increase his monetary claim 19 days before the date of the hearing without amending his application and serving that amended application on the landlord.

In addition, the parties provided confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

And finally, the landlord testified that the tenant previously disputed a rent increase for this tenancy which was dismissed without leave to reapply. The landlord provided the previous decision file number ("previous decision") which I have included on the cover page of this decision. As a result, and during the hearing, I read through the previous decision and I agree with the landlord that the tenant has previously applied to dispute a rent increase and that a previous arbitrator dismissed that application without leave to reapply. The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

> "…the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache* and *Vey Gamache v. Mark Megyesi* and *Century 21 Bob Sutton Realty Ltd.,* Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson,* (1843), 67 E.R. 313.

In light of the above, I am unable to hear the tenant's claim to dispute a rent increase related to this tenancy as that matter has already been decided upon in the previous

decision which was dismissed without leave to reapply. Therefore, I will not consider the tenant's application to dispute a rent increase which leaves the tenant's application for the return of July 2016 rent in the amount of $3,250.00.

Issues to be Decided

- Is the tenant entitled to money owed or for compensation for damage or loss under the *Act?*
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

A copy of the most recent tenancy agreement was submitted in evidence. The tenancy began on September 1, 2014. The parties disputed the date the tenant vacated the rental unit. The tenant testified that he vacated the rental unit on June 30, 2016 and that the landlord changed the locks to the rental unit as of July 1, 2016. The landlord denied changing the locks to the rental unit and stated that the tenant had access to the rental unit until July 31, 2016.

There is no dispute that the tenant paid $3,250.00 for use and occupancy of the rental unit for July 2016. The parties dispute whether the tenant should have the amount of $3,250.00 returned for July 2016 use and occupancy. The tenant's position is that the landlord unlawfully accepted July 2016 rent and that it should be returned to the tenant. The landlord disagrees. The landlord stated that the previous decision was not dated until July 6, 2016 and that the tenant filed an Application for Review Consideration which was dismissed in a Review Consideration Decision dated July 26, 2016. Therefore, the landlord's position is that due to the tenancy ending based on the 1 Month Notice to End Tenancy for Cause which was the decision dated July 6, 2016 and that the tenant had access to the rental unit until the end of July 2016 and that the Review Consideration Decision was not issued until July 26, 2016 that the landlord was entitled to receive money for use and occupancy for July 2018. The tenant testified that he did not have any documentary evidence to support that he could not access the rental unit in July 2016 such as a copy of a text or email to the landlord.

During the hearing, both parties were cautioned regarding interrupting each other and myself. The tenant; however, continued to interrupt the landlord and myself throughout the hearing even after being cautioned that the hearing would end if he could not control his outbursts. Eventually, the tenant was advised that his application was being

dismissed due to insufficient evidence and the tenant's failure to stop interrupting me during the hearing.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the *Act.* Accordingly, 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 instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the tenant has failed to meet parts one and two of the test for damages or loss. In addition, I find that the landlord was entitled to collect money for use and occupancy for July 2016 as the previous decision was not issued until July 6, 2016 and the Review Consideration Decision was not issued until July 26, 2016 and that I find it is more likely than not that the tenant did have access to the rental unit as claimed by the landlord. Furthermore, I find it very unlikely that if the tenant did not have access to the rental unit that he would not at least write a text or an email to the landlord to complain about not

having access to the rental unit after paying for use and occupancy and submit that as evidence for my consideration. Therefore, I dismiss the tenant's application in full due to insufficient evidence, without leave to reapply.

Conclusion

The tenant's application is dismissed in full without leave to reapply due to insufficient evidence.

I do not grant the filing fee as a result.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 19, 2018

Residential Tenancy Branch