Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, RR
FFT, OLC, RP, RR

Introduction

This hearing convened as a result of two Tenant's Application for Dispute Resolution, both filed on September 5, 2018.

In the first application the Tenant sought an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement, an order for a rent reduction in the amount of $7,500.00 for alleged harassment, as well as recovery of the filing fee (hereinafter referred to as "Application 1".)

In the second application the Tenant also sought an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement, an order for a rent reduction in the amount of $1,500.00 for loss of us of services or facilities (including but not limited to loss of use of the clothes dryer and range hood exhaust), an Order that the Landlord make repairs to the rental unit, as well as recovery of the filing fee (herein after referred to as "Application 2").

The hearing of the Tenant's Application 1 was scheduled by teleconference at 9:30 a.m. on October 16, 2018. The hearing of Application 2 was scheduled for teleconference at 11:00 a.m. on October 16, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Joining Applications

Hearings before the Residential Tenancy Branch are conducted according to the *Residential Tenancy Branch Rules of Procedure.* Rule 2.10 allows an Arbitrator to join proceedings and reads as follows:

Pursuant to my Interim Decision of October 16, 2018, I joined the Tenant's Applications made September 5, 2018.

Preliminary Matter—Format of Hearing

Rule 6.3 of the *Rules of Procedure* provide as follows:

> A dispute resolution hearing may be held:
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> a) by telephone conference call;
> b) in person;
> c) in writing;
> d) by video conference or other electronic means; or
> e) any combination of the above at the discretion of the Residential Tenancy Branch.

Based on the history of this tenancy as described in prior Decisions, the conduct of the parties during the hearing before me on October 16, 2018, and the issues raised, I exercised my discretion and ordered that the parties provide written submissions pursuant to Rule 6.3 of the *Rules of Procedure.*

Issues to be Decided

1. Is the Tenant entitled to monetary compensation in the form of a retroactive rent reduction in the amount of $7,500.00 for alleged harassment?

2. Is the Tenant entitled to a rent reduction in the amount of $1,500.00 for loss of use of services or facilities?

3. Should the Landlord be ordered to comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* or the residential tenancy agreement?

4. Should the Landlord be ordered to make repairs to the rental unit?

5. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

At the outset of the hearing before me the Landlord stated that the Tenant's application should be dismissed on the basis that the issues raised in the applications had already been decided.

A review of the materials, as well as the branch records, indicated that the parties have been involved in at least five prior hearings in less than four months related to this tenancy, in addition to the two hearings before me on October 16, 2018. Six more hearings were scheduled between October 18, 2018 and April 9, 2019. The file numbers for related files are included on the unpublished cover page of this my Decision.

The parties were ordered to make submissions as per my Interim Decision. The terms of that Order read as follows:

1. By no later than 4:00 p.m. on October 31, 2018 the Tenant shall provide his written submissions for both his Applications filed on September 5, 2018; these submissions shall include:

    a. a detailed breakdown of all amounts claimed in both Applications;

    b. detailed submissions regarding each claim and the basis upon which the Tenant seeks the relief sought;

    c. submissions with respect to the issue of *Res Judicata*, as it relates to the Tenant's claims made in the September 5, 2018 Applications and all prior Decisions made in relation to this tenancy; and,

    d. should the Tenant abandon any portion of his claims made in his September 5, 2018 Applications, he shall clearly note this in his submissions.

2. By no later than 4:00 p.m. on November 14, 2018 the Landlord shall provide his written submissions in response to both of the Tenant's Applications filed on September 5, 2018; these submissions shall include:

a. a response to each claim made by the Tenant including a response to the amounts sought;

b. submissions with respect to the issue of *Res Judicata*, as it relates to the Tenant's claims made in the September 5 Applications and all prior Decisions made in relation to this tenancy; and,

c. the Landlord shall not be required to respond to any portion of the Tenant's September 5, 2018 Applications which have been noted as abandoned in his written submissions.

The Tenant's initial submissions were provided on October 20, 2018 and included eight pages of written submissions. The first page and a half included a table wherein the Tenant detailed historical and ongoing issues with the Landlord, including the following headings:

- Incident Date;
- Date of Initiating Doc.;
- RTB # or Source Doc.;
- Decision or Review date;
- Main Cause or Subject Matter; and,
- Outcome.

Following this, the Tenant provided a further table wherein he set out the relief sought in the applications before me, as well as his submissions relating to the issue of *res judicata.* In this table the Tenant confirmed he sought the following in respect of Application 1:

1. Monetary compensation in the amount of $5,000.00 for the following:

- a "forged court order email" and a penalty against the Landlord and one time rent reduction "large enough to dissuade the Landlord from breaking the law";
- removal of the Tenant's door on August 21, 2018; and,
- multiple cancelled eviction notices/applications and reviews created by the Landlord since May 1, 2018.

2. Monetary compensation in the amount of $500.00 for an alleged "falsehoods" within a letter from M.B.'s which was evidence in the Landlord's Application for Review Consideration in June of 2018

3. Monetary compensation in the amount of **$2,500.00** for the Tenant's allegation that the Landlord manufactured a "fake fire" hoax for eviction purposes on August 30, 2018.

4. An Order that the Landlord be prohibited from filing further applications.

5. An Order that the Landlord's numerous notices and applications be declared an "Abuse of Process" and or harassment.

6. An Order that the Landlord pay the filing fee.

The Tenant further confirmed that he sought the following in respect of Application 2:

1. A rent reduction of $60.00 for the Landlord shutting off the wifi on July 4, 2018;

2. $500.00 in compensation for the Landlord harassing the Tenant and making a "baseball bat" threat;

3. $500.00 "per incident" for three alleged threats made by the Landlord to the Tenant;

4. An Order that the Landlord cease and desist uttering threats;

5. An Order that the Landlord purchase a vent-cleaning services;

6. An Order that the Landlord pay the filing fee; and,

7. An Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* and/or the residential tenancy agreement.

In his initial written submissions the Tenant also provided three pages of general submissions set out his submissions regarding the issue of res judicata.

The Landlord replied to the Tenant's submissions by written submissions dated October 28, 2018 (received November 2, 2018) as follows.

The Landlord denies that he is harassing the Tenant, submits that all three 2 Month Notices to End Tenancy for Landlord's Use were issued in good faith and notes that he

has only issued one 1 Month Notice to End Tenancy for Cause. The Landlord also claims that in the 5.8 year prior, he did not issue any notices to end the tenancy.

The Landlord notes that he has made a monetary offer to resolve matters with the Tenant and the Tenant refused.

The Landlord alleges that the Tenant has begun an internet smear campaign against the Landlord and that it is the Tenant who is harassing the Landlord through multiple disputes.

The Landlord submits that it is the Tenant who is responsible for replacement or cleaning of the hood fan vent filter.

The Landlord denies he has created a “fake fire hoax” and says that the Tenant left the burner on while he was away from the rental unit causing an item to char such that the fire department was called due to the smell.

The Landlord writes that he requires “clean electricity” for sensitive electronic measurements, and the Landlord turned off the dryer because the Tenant was using it every day.

The Landlord further writes that the “baseball bat” wielding allegation is false. He claims that after a prolonged dispute regarding the Tenant installing 15 lights/alarms along the fence without the Landlord’s permission, removal of some of the alarms/lights by the fire department, and reinstallation of the alarms/lights by the Tenant, the Landlord threatened he would remove the lights/alarm with a baseball bat.

The Landlord writes that the Tenant’s allegations regarding a “forged court order email” is false. The Landlord writes that in a previous hearing the RTB sent the Landlord’s daughter’s evidence letter as an attachment due to lost data on a corrupted USB memory drive. He further writes that he merely forwarded the RTB email with the attachment to the Tenant.

The Landlord also writes that the Tenant’s request for a one time rent reduction of $5,000.00 is merely his attempt to obtain an administrative penalty. He further notes that the Tenant was previously informed by the RTB that such requests must be submitted to the Director.

The Landlord admits he threatened to take the door off the rental unit, but did so "under distress" and as a result of the Tenant's malicious and slanderous smear campaign on the internet. The Landlord notes that it was the Landlord who called the police.

The Landlord notes that by Decision dated August 30, 2018, a rent reduction was ordered with respect to the wifi, dryer and hot water. At that time the Tenant also sought an administrative penalty.

The Landlord disputes the Tenant's claim for $500.00 for "two very obvious falsehoods" contained within M.B.'s letter, firstly on the basis that the letter was not false, and secondly because the Tenant has failed to indicate what the "obvious falsehoods" are.

The Landlord alleges that the Tenant is using the RTB as a sounding board for his ongoing harassment of the Landlord.

The Landlord confirms he will continue to issues 2 Month Notices to end tenancy until he regains possession of his home.

The Landlord writes that the issue of the wifi was addressed in a prior hearing such that the Tenant's rent was lowered by $65.00 per month such that he has already been awarded compensation.

The Landlord also notes that in a subsequent application, the Tenant's claim for a rent reduction of $15,500.00 for services not provided was dismissed without leave by Decision dated September 14, 2018 such that the principle of *res judicata* applies.

The Tenant provided his reply submissions on November 21, 2018. Most of the submissions are a reiteration of information provided in his original submissions. The following submissions are relevant to the issues I have to decide.

The Tenant alleges that he obtained leave to reapply for an Order that the Landlord clean the range hood exhaust fan pursuant to the August 30, 2018 Decision of Arbitrator Takayanagi.

The Tenant also alleges that in the August 31, 2018 Decision of Arbitrator Stark, the issue of his lack of wifi *on July 4, 2018* was not addressed.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, *Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:** **www.gov.bc.ca/landlordtenant**.

I will first deal with the Tenant's claim for monetary compensation from the Landlord. The total amount claimed by the Tenant in both applications is $9,000.00.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Tenant's Claim for Monetary compensation in the amount of $5,000.00

Under this claim, The Tenant confirms he seeks monetary compensation as a result of a an alleged forged email. The Landlord disputes this claim.

Forgery is a criminal matter over which I lack jurisdiction.

In any event, the Tenant specifically asked for a "penalty against the Landlord and one time rent reduction 'large enough to dissuade the Landlord from breaking the law'". As the Tenant has repeatedly been informed, requests for administrative penalties pursuant to section 95 of the *Act,* must be made to the Director. I am not able to make such an award as I do not have the authority to do so.

The Tenant alleged the Landlord removed his door on August 21, 2018. The Landlord concedes that he made such a threat, but did not in fact remove the door.

The evidence before me confirms that these parties have a highly contentious and conflictual landlord tenant relationship. The evidence also confirms that the parties have exchanged words on occasion and that each believes the other is more responsible for their conflict. While a threat to remove the Tenant's door is unacceptable, I am unable to find that the Tenant suffered any losses in this regard. I therefore dismiss his claim for related compensation.

Under this claim the Tenant also asks for monetary compensation for "multiple cancelled notices/applications created by the Landlord since May 1, 2018."

As noted, these applications came before me as a result of two separate applications made on September 5, 2018. As such, the relevant time period with respect to the Tenant's compensation claim under this head, is from May 1, 2018 to September 5, 2018.

A Landlord is permitted to end a tenancy provided they issue a notice to end tenancy in accordance with the *Act.*

A review of the branch records confirms that during the relevant time period, the Landlord attempted to end the tenancy for his own use in May of 2018. The Tenant applied to dispute this notice and by Decision dated July 11, 2018, the notice was cancelled on the basis that the notice itself was not available to the Arbitrator such that the Arbitrator could not find the notice complied with section 52 of the *Act.*

The Landlord then sought an early end to tenancy due to an alleged fire risk. By Decision dated August 20, 2018, the Arbitrator found that the Landlord had not met the second branch of the test in section 56, namely that the Arbitrator was not able to find that it would be unreasonable or unfair to the Landlord to wait for a 1 Month Notice to End Tenancy to take effect.

After a related hearing on the 1 Month Notice to End Tenancy for Cause (dealing with the alleged fire risk as well as alleged slanderous postings on the internet by the Tenant) on August 28, 2018, the Notice was cancelled.

In July of 2018, the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use. The Tenant applied to dispute this Notice and a hearing occurred on September 14, 2018. By Decision dated the same day, the Notice was cancelled.

I find that the issuance of the above notices in a four month period is not unreasonable. In essence, as the first 2 Month Notice appears not to be issued on the proper form, the Landlord had only issued one 2 Month Notice to End Tenancy for Landlord's use. Similarly, the 1 Month Notice to End Tenancy for Cause and the Landlord's request for an early end to tenancy pursuant to section 56 relate to the same claims, although different procedures before the branch.

Further, section 78 of the *Act* provides the parties with an opportunity to apply for Review Consideration in limited circumstances. I am unable to find that the Landlord has breached the *Act* by exercising his right to apply for such a review.

For these reasons I dismiss the Tenant's claim for $5,000.00 in compensation from the Landlord.

Monetary compensation in the amount of $500.00

Under this heading the Tenant writes that he seeks compensation for an alleged "falsehoods" within a letter from M.B.'s which was evidence in the Landlord's Application for Review Consideration in June of 2018. As this letter was written by a third party, the Landlord is not responsible for the contents, if in fact they were false. As such, I dismiss the Tenant's claim for $500.00 in compensation.

Monetary compensation in the amount of $2,500.00

Under this head of damages the Tenant alleges the Landlord manufactured a “fake fire” hoax for eviction purposes on August 30, 2018.

In the Decision of August 28, 2018, the Arbitrator found as follows:

> *“While I accept that there was an incident where the tenant left cooking unattended, I do not find that is sufficient to find that the property is at significant risk. The parties gave evidence that there has only been one instance where the fire department was called. I do not find that the landlord has provided sufficient evidence that the ambient smells and smoke associated with cooking are of such frequency or magnitude that it would be considered a significant interference with the rights of others.”*

The presiding Arbitrator found that the Tenant left cooking unattended. While this was not found to be sufficient to end the tenancy, the Arbitrator accepted that the Tenant left cooking unattended. Such actions could create a fire risk and as such I find the Tenant has failed to prove this was a “fake fire hoax for eviction purposes”. I therefore deny his request for $2,500.00 in related compensation.

The Tenant’s request for an Order that the Landlord be prohibited from filing further applications and an Order that the Landlord’s numerous notices and applications be declared an “Abuse of Process” and or harassment.

Section 59(5) of the *Act* allows the Director to refuse to accept an application in limited circumstances and reads as follows:

> (5) The director may refuse to accept an application for dispute resolution if
>
> (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
>
> (b) the applicant owes outstanding fees or administrative penalty amounts under this Act to the government, or
>
> (c) the application does not comply with subsection (2).

There is no authority under the *Act* to prohibit future applications by either party, as the parties retain the right to seek resolution through the branch.

In any event and for the reasons set out earlier in my Decision related to the Tenant’s claim for $5,000.00, I dismiss the Tenant’s claim for the above Orders.

Again, should the Tenant believe an administrative penalty is warranted, he is to make his requested to the Director of the Residential Tenancy Branch.

Tenant's request for a rent reduction of $60.00 lack of wifi on July 4, 2018;

A review of August 31, 2018 Decision of Arbitrator Stark confirms the Arbitrator was informed that the "wifi was cut off as of July 5, 2018". Also pursuant to that Decision the Tenant was awarded a "$65.00 a month in a rent reduction, retroactive to July 1, 2018, for the loss of the wifi service" such that the Tenant has already been compensated for July 4, 2018. I therefore find this matter has already been adjudicated upon and I am prohibited from revisiting the matter on the basis of *res judicata.* The Tenant's claim for related compensation is therefore dismissed.

$500.00 in compensation for the Landlord harassing the Tenant and making a "baseball bat" threat;

The evidence before me indicates that this matter relates to a dispute between the Landlord and the Tenant about lights/alarms installed by the Tenant on the rental property. The Landlord alleges this was done without his permission and that they were in fact removed by the fire department. The Landlord further alleges the Tenant reinstalled these lights/alarms. The Tenant does not dispute the Landlord's submissions in this regard.

As noted previously in this my Decision, the Tenant bears the burden of proving his monetary claim on a balance of probabilities. While threatening to damage the Tenant's property is contrary to a positive Landlord/Tenant relationship, I am unable to find that the Tenant has suffered any loss, or that the Tenant has proven the actual amount to compensate him for such an alleged loss. I therefore dismiss this portion of the Tenant's monetary claim.

$500.00 "per incident" for three alleged threats made by the Landlord to the Tenant;

The Tenant writes that the "dates and times are listed in the Timeline provided" in a previous matter before the Residential Tenancy Branch. A further review of the branch records confirms that the hearing of that matter occurred on July 11, 2018.

Although the Tenant was granted leave to reapply for some of the relief sought in his application giving rise to the July 11, 2018 hearing, that does not mean the evidence he filed in support of that previous file becomes evidence in the hearings before me. The Tenant must file all evidence in support of his claims in accordance with the *Rules of Procedure.*

Again, the Tenant bears the burden of proving his monetary claim on a balance of probabilities. I am unable to find, based on the evidence before me, that the Tenant has suffered any loss, or that the Tenant has proven the actual amount required to compensate him for such an alleged loss.

I therefore find the Tenant has submitted insufficient evidence to support his claim for $500.00 “per incident” for three alleged threats made by the Landlord.

An Order that the Landlord cease and desist uttering threats

This is a criminal matter which is outside my jurisdiction. I therefore dismiss the Tenant’s claim in this respect.

An Order that the Landlord purchase a vent-cleaning services

In his original submission, the Tenant writes as follows:

> “For a long time, even years probably, the tenant suggested “vent cleaning” to the landlord. These blocked exhaust vents caused several “cooking fumes” incidents in the past, and prevented the tenant from fully enjoying the use of the electric stove.”

The Tenant failed to submit any evidence to support a finding that it is the vent, not the filter which has created issues with cooking exhaust/smells.

The Landlord aptly notes that it is the Tenant’s responsibility to maintain and clean the interior filter of the range hood vent.

I am unable to find, based on the evidence before me that the vent itself requires cleaning. I therefore find the Tenant has submitted insufficient evidence to support a finding that the Landlord should be ordered to hire vent cleaning services.

An Order that the Landlord pay the filing fee

As the Tenant has been unsuccessful in his claim I dismiss his claim for recovery of the filing fee.

An Order that the Landlord comply with the Residential Tenancy Act, the Residential Tenancy Regulation, and/or the residential tenancy agreement

The parties are reminded that a landlord-tenant relationship is a business relationship. While landlords and tenants may become friends during the tenancy such that the relationship may feel more personal, it remains a business relationship and both parties must comply with the *Act,* the *Regulations,* and the residential tenancy agreement.

This is clearly a problematic tenancy. Although it appears the first five years were without incident, the parties have been in constant litigation in the past six months. Further hearings are scheduled into the next year.

Based on the evidence before me, I find, on balance, that the parties are equally responsible for the conflict arising in their tenancy.

As this tenancy is ongoing the parties are encouraged to reduce the conflict in their interactions. Although I am not prepared to make such an Order today, the Landlord may consider appointing an agent to deal with this tenancy.

Matters raised by Landlord in his Written Submissions

In his written submissions the Landlord wrote that he seeks:

- $5,000.00 for his time dealing with visits from the police at the behest of the Tenant;
- an order of possession of the rental unit; and,
- orders prohibiting the Tenant from making further applications.

The Landlord also submitted that an error was made in the September 14, 2018 Decision “due to cross application contamination” of a previously decided matter.

As the only files before me were the Tenant’s two applications of September 5, 2018, the Landlord’s requests are not properly before me. The Landlord must file his own application. I therefore make not findings with respect to these requests.

Conclusion

The Tenant's claim is dismissed.

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 19, 2018

Residential Tenancy Branch