



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT RP RR

Introduction

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

- a monetary award pursuant to section 67 of the *Act*;
- recovery of the filing fee from the landlords pursuant to section 72 of the *Act*;
- an Order for the landlords to provide services or facilities required by the law pursuant to section 65 of the *Act*; and
- a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords were represented at the hearing by agents C.Z. and G.Z. (the "landlord").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") but explained no evidence was received. The tenant confirmed that he did not serve the landlord with his evidentiary package. I find the landlord was therefore only served with the tenant's application for dispute pursuant to section 89 of the *Act*. I decline to consider the tenant's evidentiary package as it was not sufficiently served pursuant to section 88 of the *Act*.

Following opening remarks the tenant said he was no longer looking for an order directing the landlord to make emergency repairs to the rental unit. The parties confirmed that a cheque for \$1,758.75 was provided to the tenant on January 28, 2019 representing the costs associated with repairs that were required in the rental unit.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and a reduction in rent?

Can the tenant recover the filing fee?

Background and Evidence

The tenant explained this tenancy began in December 2012. Rent is \$1,660.00 per month, while a security deposit of \$800.00 paid at the outset of the tenancy continues to be held by the landlord. The tenant said that in addition to monthly rent, he pays \$85.00 per month in parking.

The tenant seeks an award of \$4,000.00 representing a return of rent paid and a rent reduction for the time and loss associated with repairs that were required in his unit following a flood. In addition to this reduction in rent, the tenant applied for \$500.00 due to loss of a painting.

The parties agreed that the unit was flooded on June 28, 2018 due to a plumbing issue which occurred in the unit above that of the tenant's. The tenant said repairs did not begin until September 24, 2018 and were "mostly" finished in October 2018. The tenant explained he performed many of the repairs himself and was forced to pursue the building manager on many occasions to ensure his invoice was paid. The tenant described the many attempts he made to recover the costs associated with the repairs. The tenant said the inconvenience and time associated with the repairs and caused him loss and for this he sought a partial return of rents paid.

The landlord's agent largely agreed with the details provided by the tenant; however, she highlighted the fact that the landlord only purchased the property on September 1, 2018. The landlord's agent said that when she was made aware of the delay and issues related to the repairs, she took proactive steps to ensure that repairs were completed and invoices were paid. The landlord said the building had previously been operated by a strata corporation who managed the individually owned units. She said the tenant was ultimately paid by the insurance company of the individual who previously owned the unit above him.

Analysis

The issue of compensation is explored in detail by *Residential Tenancy Policy Guideline #16* which states as follows, “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether: **a party to the tenancy agreement** has failed to comply with the *Act*, regulation or tenancy agreement.”

Residential Tenancy Policy Guideline #43 examines the issue of naming parties to an Application for Dispute Resolution. It states, “The *Act* require[s] Applications for Dispute Resolution to include the full particulars of the dispute that is subject to the dispute resolution proceedings. Parties who are named as respondents on an Application for Dispute Resolution must be correctly named...If any party is not correctly named, the director may dismiss the matter with or without leave to reapply.”

After having considered the testimony of both parties, I find the tenant has incorrectly named the corporate landlord as a respondent and that any damages which may stem from loss under the *Act* as described in *Policy Guideline #16* cannot adequately be attributed to the current corporate landlord. I accept the landlord’s testimony that the corporate landlord did not assume ownership of the property until September 1, 2018 while the issues which were described by the tenant stem from an incident in June 2018. I find they were not a party to the tenancy agreement at the time loss allegedly occurred.

I find the landlord took sufficient steps to address the issue upon learning of the problem and I find that the tenant has failed to name the correct landlord. I dismiss the tenant’s argument that the strata corporation and the named corporate landlord are the same entity. The tenant did not produce any documentary evidence in support of this claim and I find the fact that the tenant was paid by the insurance company of a former individual owner to support the corporate landlord’s position that they were not in control of the building when the incident took place. For these reasons, I dismiss the tenant’s application with leave to reapply.

As the tenant was unsuccessful in his application, he must bear the cost of his own filing fee.

Conclusion

The tenant’s application is dismissed with leave to reapply.

The tenant must bear the cost of his own filing fee.

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: January 29, 2019

Residential Tenancy Branch