



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, OLC, PSF, RR

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, 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 to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

At the outset of the hearing the tenant raised some issues with the landlords' documentary evidence. The tenant was relying on Residential Tenancy Branch Rules of Procedure 3.12 and 3.17; they are as follows:

3.12 Willful or recurring failure

The arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or an order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

The tenant submits that the landlord is not credible and has failed to comply with other RTB decisions. The tenant submits that the landlord has entered falsehoods and lies in his documentary package which results in defamation. I considered the tenants request and advised him that I would be considering the landlords evidence as discussed between the parties at the outset of the hearing and that the tenants' submission was noted. The tenant indicated that he understood. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to an order compelling the landlord to provide services or facilities required by law?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

Background and Evidence

The tenant gave the following testimony. The tenant testified that he moved into the unit on December 12, 2012. The tenant testified that his monthly rent as of February 1, 2019 is \$770.00 per month. The tenant testified that the landlord has wilfully and purposely cut off electricity to his unit in retaliation as a result of the landlord not being successful in other hearings. The tenant testified that on several occasions since November 2018 the landlord has cut power to different parts of his suite. The tenant testified that exterior security lights were damaged to which the landlord later took responsibility for and offered a rent reduction.

The tenant testified that because those security lights were damaged he was so distressed that he sold his electric motorbike at a significant discount. The tenant seeks \$100.00 for each incident that the landlord cut off his electricity; \$5.00 dollars a day rent reduction for loss of quiet enjoyment, \$4.00 per day for each day that the landlord discontinues power to the deck outlets, \$1250.00 payment or rent reduction for the discount sale of his motorbike, a onetime cash payment of \$195.00 for the destruction of the security lights and \$1500.00 aggravated damages "so that he won't try this again", and the recovery of the \$100.00 filing fee for this application.

The landlord gave the following testimony. The landlord testified that he doesn't know why the tenant won't move out despite being served three notices to end tenancy. The landlord testified that no written tenancy agreement was ever entered into or any specific terms. The landlord testified that he wants to have the enjoyment of his entire home and that the tenant has prevented him from doing this.

Analysis

The relationship between these two parties is an acrimonious one. The parties have been involved in numerous hearings with one another. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or**

loss bears the burden of proof. The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

When I asked the tenant to present his claim he was more intent on trying to discredit the landlord than focus on his application. Despite four separate attempts that I made to explain the process to the tenant and the issues that I could address, he would revert back to previous hearings and issues from those hearings. The tenant would then launch back in to whether the landlord was credible or not. When I asked the tenant to guide me through his claim and explain how he came to the amount that he seeks, he replied: "it's too much to cover, I don't want to waste anybody's time, it's all there".

Despite the tenant not wanting to review the evidence, I have reviewed his documentation and found a recurring theme whereby he failed to mitigate any loss and that he was unable to prove that the actual amount as claimed. As noted above, an applicant must satisfy all four factors to be granted a monetary order. Although the landlord took responsibility for damaging the outdoor security lights, the tenant failed to provide the actual cost as claimed. Much of the tenants' documentation was irrelevant or not pertinent to the monetary claim but an illustration of the poor relationship that he and the landlord have. The items in the tenants application are inter related in that he is seeking an order for the landlord to comply and provide services and monetary compensation or rent reduction because of those issues.

Based on the insufficient evidence before me, and the tenant being unable to satisfy **all four factors** as outlined above I hereby dismiss the tenants' application for a monetary order. I also dismiss the remainder of the tenants application as he has not provided sufficient evidence to show that he has not been provided services or facilities as required, has not provided sufficient evidence to show that a rent reduction is appropriate, and not provided sufficient evidence to show that he should be entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement. As the tenant has not been successful in this application, he is not entitled to the recovery of the filing fee.

Conclusion

The tenants' application is dismissed in its entirety.

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