



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP, RR, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for emergency repairs
- b. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- c. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 24, 2019. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

At the hearing the Tenant stated that he was claiming a further \$2000 for the cost of eating out. He failed to provide receipts. Also, he failed to amend his Application for Dispute Resolution as required by Rule 4.

Rule 4 – Amending an Application for Dispute Resolution

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

Rule 2.2 provides as follows:

2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application.

See also Rule 6.2 [What will be considered at a dispute resolution hearing].

I determined it was not appropriate to allow the Tenant to amend his Application for Dispute Resolution at the hearing as it would not give the landlord sufficient time to prepare to defend itself. As a result I determined that it was not appropriate to consider the claim for the cost of eating out as it has not been made in the Application for Dispute Resolution.. The tenant has the right to file another Application for Dispute Resolution making this claim.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for repairs?
- b. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on July 28, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$600 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$300 on July 24, 2017.

The tenants seeks recover the sum of \$4000 which represents reimbursement of more that 6 months rent. He testified the rental unit was not liveable because there is a bad smell in the apartment. He is asking that the landlord check everything including fixing the drains or give him a new apartment. He testified he has been paying rent at this apartment for 6 months but there is something wrong with the place and he is unable to stay there. There is a bad smell coming from the drain in his kitchen. The tenant testified he has headaches, burning lips/eyes, loss of hearing, skin burning. He did not know what the cause was but submits it might be caused by chemicals.

The tenant relies on a note from his doctor that states "Above Pt. say he feels he has a normal life only when he lives at the Salvation Army. Due to medical reasons – ongoing examination and consultations in progress we will inform you about the outcome." He testified the doctor told him he should vacate the rental unit.

The tenant also produced a letter from the Salvation Army dated January 29, 2019 that states the tenant has lived in their centre for 128 days and stating it was necessary for him to transition

moving out. There is another letter stating the Tenant has lived there for 189 days from October 24, 2018 to March 31, 2019.

The landlord testified the tenant did not disclose he was having difficulties until the end of January. Further he failed to raise the complaint about the smell coming from the kitchen sink until after the middle of March. She testified they have investigated and have not found anything that would cause the problems. There have been no complaints from other tenants and they have not sprayed or used chemicals.

The landlord further testified they respond quickly whenever they receive a complaint from tenants. She produced eight work orders relating to complaints from this tenant dating back to July 2017 where the landlord has fixed things such as blinds, door closet, shower and tub handles, cleaned freezer drains, fixed patio screen etc. within a day or two of receiving the complaint. The work order produced by the landlord dated March 22, 2019 states the landlord replaced the p-trap under the kitchen sink and it was full of pasta noodles.

Analysis:

Policy Guideline #16 includes the following:

C. COMPENSATION

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;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

...

After carefully considering all of the evidence I determined the tenant failed to prove the rental unit is not livable for the following reasons:

- The tenant has the burden of proof to present sufficient evidence to establish his claim on a balance or probabilities.
- I accept the tenant's evidence that he has not lived in the rental unit for 6 months. However, the tenant failed to prove there is a problem with the rental unit.
- The Application for Dispute Resolution filed by the tenant claims there is a smell coming from the kitchen sink. However, the best evidence indicates that it was caused by rotting pasta noodles which would have been left there by the Tenant. Further I accept the testimony of the landlord that the tenant did not advise them of this problem until the third week of March. The landlord responded within a short period of time and replaced the p-trap.
- The tenant gave evidence that the problems must be caused by the spraying of chemicals. However, there is insufficient evidence to establish the landlord has sprayed any chemicals.
- I accept the evidence of the landlord that they have not received complaints from other tenants in the rental property relating to spraying or the use of chemicals. . There are 24 units in total.
- The medical evidence from the Tenant's doctor does give an opinion as to the tenant's medical issues apart from restating the tenant's position that he can live a normal life only at the Salvation Army. It does not prove the tenant's health issues are caused by the rental unit.
- The tenant failed to prove he advised the landlord of what he considered to be a problem with the unit in a timely manner. The tenant seeks compensation dating back to October 2018. However, the evidence indicates he did not advise the landlord of alleged chemical problem until the end of January. The landlord investigated and was not able to find a cause. He advised the landlord of the smell from the kitchen sink around the third week of March and the landlord fixed it within a couple of days. The Tenant cannot claim for a reduction of rent if the tenant has not advised the landlord of the alleged problem. A landlord cannot be expected to fix a problem if they haven't been advised of that problem.

As a result I dismissed the tenant's claim for emergency repairs and a reduction of rent as the tenant failed to prove that the landlord breached a provision of the Residential Tenancy Act, Regulations and/or tenancy agreement.

Conclusion:

I dismissed the tenant's claim for emergency repairs and compensation for a reduction of rent. I dismissed the tenant's claim to recover the cost of the filing fee as the tenant has not been successful. .

The tenant stated he wished to move to another unit. The landlord stated there are other units available and that if the tenant came to them they would consider his request to move to another unit. It appears this might be a solution that would satisfy both parties.

This decision is final and binding on both parties.

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: April 29, 2019

Residential Tenancy Branch