



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0879993 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord, the tenant and the tenant's legal advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant's legal advocate testified that she served the landlord with the tenant's application for dispute resolution on January 11, 2019, via registered mail. The landlord testified that he received the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was deemed served with the tenant's application for dispute resolution on January 16, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. On December 24, 2018 the landlord showed the tenant a room and the tenant did not accept it (the "first property"). The landlord then showed the tenant a room at a different address (the "second property") and the tenant accepted it and moved in on December 24, 2018. A written tenancy agreement was not signed by the parties. The tenancy was on a month to month basis. The Ministry of Finance paid the landlord \$375.00 for the tenant's rent and \$250.00 for the tenant's security deposit. The above payments were made prior to the tenant viewing the subject rental property.

The landlord testified to the following facts. The landlord was contacted on December 24, 2018 by social services, asking the landlord to provide a room for the tenant. The tenant stayed at the second property until approximately January 10-12, 2019. During the time the tenant stayed at the second property, he was parking his car in a parking lot across the street. The tenant was moved to a third property (the "third property") because it had space in the driveway for him to park his car. The tenant stayed at the third property for approximately 2 nights.

The landlord testified to the following facts. While the tenant was residing at the second and third properties, the tenant requested the landlord to refund the security deposit and rent paid by the Ministry of Finance, to himself. The landlord agreed to return the security deposit to the Ministry of Finance but since the tenant had been residing at the landlord's properties from December 24, 2018- approximately January 14, 2019, he did not agree to refund the rent to the tenant. The landlord testified that even if he were to refund the rent, it would be refunded to the Ministry of Finance, not to the tenant directly.

The tenant testified to the following facts. The tenant slept at the second property for two nights but could not stay longer because the second property had a rat and bed bug infestation. The tenant did not enter into evidence any documents evidencing the alleged bed bug and rat infestation. The tenant slept in his car from December 26, 2019 to sometime in January 2019. The tenant requested the landlord to refund him the rent and security deposit paid by the Ministry of Finance.

Both parties agree that the landlord refunded the security deposit to the Ministry of Finance.

The landlord testified to the following facts. The landlord's properties do not have a bed bug or rat problem, they are clean and well maintained. The landlord entered into evidence two signed statements from tenants at the second property stating that the subject property is clean and does not have a rat or bed bug problem.

The landlord testified that the tenant never told him that there was a bedbug or rat problem, just that he wanted to move out and he wanted the landlord to give him the rent money paid by the Ministry of Finance.

The tenant's legal advocate testified that when the tenant first came to see her on January 7, 2019 he was homeless.

The tenant testified that he requested social services to provide him with further rent funds for January 2019, but they refused because they had already paid the landlord the tenant's allotted rent money.

The tenant is seeking to recover the security deposit and rent money paid by the Ministry of Finance to the landlord for a total of \$625.00.

Analysis

Section 45 of the *Act* sets out when and how a tenant may end a tenancy. Section 45(1) states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
and

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy

Section 45(3) of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Based on the testimony of both parties, I find that the tenant did not provide the landlord with written notice of a breach of a material term of the tenancy agreement, that being the bedbug and rat problem. Therefore, the tenant was not permitted to end the tenancy early, under section 45(3) of the *Act* and the landlord is not required to return the rent money to the tenant.

Policy Guideline 16 states that 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.

Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant alleged that the landlord's properties were infested with bedbugs and rats.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenant has not proved, on a balance of probabilities, that the landlord's properties had a rat and or bedbug infestation. Pursuant to Residential Tenancy Policy Guideline #16, the tenant's monetary claim fails because the tenant did not prove that the landlord breached the *Act*, regulation or tenancy agreement.

I also note that since the Ministry of Finance paid the tenant's rent, the tenant is not entitled to recover the rent himself, rather it would be the Ministry of Finance who would need to make a claim against the landlord.

Based on the above, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: May 06, 2019

Residential Tenancy Branch