



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, ERP, RP

Introduction

This hearing dealt with the tenant's first application, filed on March 8, 2019, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*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 requiring the landlord to complete emergency and regular repairs to the rental unit, pursuant to section 33.

This hearing dealt with the tenant's second application, filed on March 27, 2019, pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 26, 2019 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to complete emergency repairs to the rental unit, pursuant to section 33.

The landlord, the landlord's agent and the tenant 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 landlord confirmed that his wife, who is his agent, had permission to represent him at this hearing. This hearing lasted approximately 39 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant stated that she did not receive the landlord's evidence package. The landlord's agent stated that it was sent to the tenant at the rental unit PO Box address by way of registered mail on April 23, 2019. The tenant confirmed that the landlord used the correct address. The landlord's agent provided a Canada Post tracking number verbally during the hearing. The Canada Post website indicated that a notice card was left on April 26, 2019, for the tenant to pick up the mail. The tenant said that she had only checked her mail on April 25, 2019. I notified the tenant that she was deemed served with the landlord's evidence package on April 28, 2019, five days after its registered mailing. Therefore, I considered the landlord's evidence package as it was deemed served at least 7 days prior to the hearing not including the hearing date, in accordance with the timeline in Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord used a correct mailing address confirmed by the tenant during the hearing and sent it by registered mail which is acceptable as per section 88 of the *Act*.

The tenant confirmed that she would be vacating the rental unit on June 1, 2019 and she did not require any repairs or orders to be made before vacating. Therefore, these portions of her application are dismissed without leave to reapply.

Both parties agreed to settle a portion of the tenant's application, except they were unable to settle the tenant's monetary claim for \$35,000.00, so I made a decision regarding the tenant's monetary claim only.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of the tenant's dispute.

Both parties agreed to the following final and binding settlement of a portion of the tenant's dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 1, 2019, by which time the tenant and any other occupants will have vacated the rental unit.

This particular comprises a full and final settlement of a portion of the dispute for both parties, except for the tenant's monetary claim. Both parties understood and agreed to the above term, free of any duress or coercion. This term is legal, final, binding and enforceable, which settles a portion of this dispute, except for the tenant's monetary claim.

The tenant applied for a total monetary claim of \$35,000.00. I made a decision regarding the tenant's monetary application because the parties were unable to reach a settlement on that claim. Below are my findings.

Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit.

The landlord said that the tenant moved in on October 16, 2018, while the tenant claimed that it was on October 17, 2018.

The tenant seeks a monetary order of \$35,000.00. She said that \$300.00 was for cleaning fees because the rental unit was not cleaned when she moved in, there was black mold, mouse feces, and faulty electrical. The landlord disputed this stating that he was not informed of anything by the tenant who claimed she was happy when she moved in to the rental unit.

The tenant seeks \$34,700.00 for future wage loss, pain and suffering and future treatments, due to a fall on the stairs at the rental property. The tenant decided the above amount during the hearing, claiming that she was told by an RTB representative that she could claim for a maximum of \$35,000.00 and she did so, hoping I would determine how much her claim was worth.

The tenant maintained that she fell on the stairs because there was no outdoor lighting and the landlord installed tread on the stairs. She explained that the landlord put in lighting after her fall. She claimed that her foot locked under the tread, she fell while going up the stairs, and she grabbed the railing and hit the wall and the stairs. She said that the landlord's former property manager documented everything in her notes, which the tenant provided, and the property manager even had issues with heavy duty items and the stairs. She stated that other tenants did not feel safe on the stairs. She alleged that the landlord did not do any repairs after, he ignored her claims, and she suffered lost job opportunities and painful treatments since the fall. She provided an MRI report, as well as her doctor's notes about ongoing treatments. She claimed that her fibromyalgia was a tissue condition that did not affect her bones and joints, despite the landlord's claim that it contributed to her fall.

The landlord disputed the tenant's monetary claim of \$34,700.00. He claimed that he checked the stairs after the tenant fell and had a handyman come in to look at it, after he was notified about the tenant's fall from his property manager. He maintained that the handyman confirmed that the stairs and railing were not dangerous. He explained that the handyman notified him that the height of the stairs were okay, the rise was equal, and the width treads were acceptable. The landlord said that no one else complained about the stairs, including other former and present tenants living at the rental property, since the stairs were updated 10 years prior. The landlord provided letters from these other tenants and the handyman. He maintained that the tenant moved her furniture into the rental unit using those stairs and had no issues. The landlord agreed that he installed roof material, shingles, on the stairs so that no one would slip or skid. He said that he is a tradesman and does renovations, so he knows what material to use. He claimed that the tenant's fall depended on things he did not know, like whether she was wearing proper footwear, whether she was under the influence of drugs or alcohol, and whether her fibromyalgia condition contributed in any way. He said that the tenant did not use the handrail when going up the stairs, which the tenant denied.

Analysis of Tenant's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$35,000.00, without leave to reapply.

I find that the tenant was unable to justify the \$35,000.00 amount being claimed. I find that the tenant failed parts 1 and 3 of the above test. The landlord disputed the tenant's claims.

The tenant applied for the above amount because someone at the RTB told her that she could apply for the maximum of \$35,000.00. The tenant did not provide a breakdown for the \$34,700.00 and indicate what amount was for pain and suffering, what amount was for lost wages, and what amount was for future treatments. She did not provide documentary evidence to show that she lost any wages, how much she is being paid at her current employment, what job opportunities she lost and how much they were worth, or what jobs she cannot complete. She did not provide documentary evidence to show the estimated cost of her treatments in the future, how much each treatment costs, and how long she requires the treatments. She provided an MRI report and a medical note from her doctor, but did not review them or go through them in any way. The doctor's note does not even reference a fall on the stairs and just indicates that the tenant requires treatment for medical reasons. The MRI is not referenced by the tenant's doctor who wrote the note and does not explain the meaning in any way. The landlord provided documents indicating other tenants used the stairs with no issues and his handyman checked the stairs and railing to confirm they were safe and not dangerous.

I find that the tenant was unable to justify the \$300.00 in cleaning costs. She initially applied for \$150.00 for cleaning and \$300.00 for future moving expenses. During the hearing, she guessed that her moving costs were \$300.00, but did not provide any invoices or receipts for cleaning. The landlord denied being advised of any complaints from the tenant about cleaning, mold, mice feces, or poor electrical when the tenant moved in.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 1, 2019. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 1, 2019. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 1 Month Notice, dated March 26, 2019, is cancelled and of no force or effect.

The remainder of 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