



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FFT

Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary Order for loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

Both parties attended the hearing. The parties confirmed exchanging evidence as prescribed by the Rules of Procedure. The parties were given opportunity to mutually resolve and settle their dispute to no avail. The parties were provided opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide relevant testimony. 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. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant evidence in this matter is that the tenancy started in 2015 and ended when the tenant ceased to pay the rent beyond August 31, 2018. The parties agreed that in June 2018 water ingress from above the rental unit "flooded" the suite causing water damage to the ceilings and carpeting. It is undisputed that the upstairs tenancy was responsible for causing a sink to overflow. The tenant testified that on June 20, 2018 they left the rental unit with solely their clothing so as the rental unit could undergo remediation, although, according to the tenant, personal and relationship considerations were also factors contributing to their decision to relocate to the home of their boyfriend. The tenant testified that at the time they were pregnant nearing birth. As well, the tenant testified that the rental unit was odorous due to the water ingress,

and they thought it unhealthy to stay in the unit during remediation. The tenant testified they had already been dividing their time between the rental unit and their boyfriend's accommodations. Upon their relocation the co-occupant, or room-mate in the tenancy, NT, remained a resident of the rental unit. The tenant and landlord agreed the tenant did not give legal notice pursuant to the Act ending the tenancy, and continued to pay the rent after June 2018 through to August 2018. The tenant claims the landlord told them they would be reimbursed for all rent paid from June 20, 2018 onward upon the landlord's insurer approving a claim by the landlord. The tenant testified they did not have *tenants insurance* and relied on the landlord for compensation to offset a claimed loss of use of the rental unit. As a result the tenant is now claiming return of all rent paid from June 20, 2018 to August 31, 2018 in the sum of \$3,366.67.

The landlord testified as to their version of events that to their understanding the tenant had previously informed the landlord in early 2018 that solely they had left the rental unit to reside with their boyfriend but that the room-mate was remaining in the unit and they wanted the tenancy agreement transferred (assigned) to the room-mate. The landlord testified the tenant continued to satisfy the payable monthly rent for what they described as "administrative purposes" so as not to surrender the rental unit and affect the room-mate's occupancy.

The landlord also provided testimony in respect to the remediation work to the rental unit and their agreement with the room-mate of the rental unit respecting repair work moving forward. The landlord provided testimony that they ultimately entered into a new tenancy agreement with the room-mate of the rental unit.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I found that the parties' versions of events in respect to the circumstances of this tenancy vary greatly from the other and in certain respects was in stark contrast.

None the less, I find that **Section 44** of the Act prescribes how a tenancy ends. It states as follows.

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

I have not been presented with evidence that the contractual tenancy ended in accordance with **Section 44** of the Act. I find I have not been presented with sufficient evidence the parties agreed the tenancy would end or had ended in early 2018. I find that despite relocating to the home of their boyfriend the tenant remained obligated to pay the rent, as was originally contracted by the tenancy agreement. I find that despite the tenant's periodic or longer absence from the rental unit the tenancy in fact continued, in the least occupied by the tenant's room-mate.

I accept the tenant's and landlord's agreed version of events that each no longer recognized the tenant having a continued obligation to pay rent after August 31, 2018, which coincided with the landlord entering into a new tenancy agreement.

In addition, by their application I find the tenant effectively is also alleging strict liability on the part of the landlord for events respecting the water ingress and the resulting loss of use forming the basis of this claim.

In this type of matter the burden of proving claims of loss rests on the claimant or applicant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the tenant take reasonable steps to mitigate or minimize the loss?

Section 7 of the Act outlines the foregoing respecting the tenant's claim for loss, which states as follows.

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy all components of the test below stemming from Section 7:

1. Proof the loss exists,
2. Proof the damage or loss claimed occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant of this matter bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I find the tenant has not shown that the landlord was negligent, or that the landlord's negligence or non-compliance with the Act or tenancy agreement resulted in the tenant's claimed loss. I find the tenant has not met the test for loss prescribed by **Section 7** of the Act and as a result I must **dismiss** the tenant's application without leave to reapply.

Conclusion

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

This Decision is final and binding.

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: July 30, 2019

Residential Tenancy Branch