



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code PSF RR MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 8, 2019, and amended on August 26, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords provide services or facilities required by the tenancy agreement or law;
- an order reducing rent for repairs, services or facilities required by the tenancy agreement or law; and
- an order granting compensation for monetary loss or other money owed.

The Tenant attended the hearing and was assisted by J.A., an advocate. The Landlords S.S.J. and B.S.J. attended the hearing, and were assisted by I.B. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Application package was served on the Landlords by registered mail on July 19, 2019. I.B. acknowledged receipt on behalf of the Landlords. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Landlords on July 24, 2019.

In addition, the Tenant submitted an Amendment to an Application for Dispute Resolution (the "Amendment"), which was served on the Landlords in person on August 28, 2019. I.B. acknowledged receipt on behalf of the Landlord. No issues were raised with respect to service or receipt of the Amendment. Therefore, I find the Amendment was served on and received by the Landlords on August 28, 2019.

The Landlords submitted documentary evidence in response to the Application. I.B. testified that 3 packages were served on the Tenant by posting copies to the door of the Tenant's rental unit on August 26, August 31, and September 8, 2019, respectively. The Tenant acknowledged receipt of the package served on August 26, 2019. However, the Tenant advised the package served on August 31, 2019 was not received until September 3, 2019. Therefore, the Tenant suggested the packages served on August 31 and September 8, 2019 were served late and should not be considered. Rule of Procedure 3.15 confirms that evidence to be relied upon by a respondent must be served on the applicant and submitted to the Residential Tenancy Branch not less than seven days before the hearing. As the documents served on August 31 and September 8, 2019 were not served in accordance with Rule of Procedure 3.15, they have been excluded from consideration.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlords provide services or facilities required by the tenancy agreement or law?
2. Is the Tenant entitled to an order reducing rent for repairs, services or facilities required by the tenancy agreement or law?
3. Is the Tenant entitled to an order granting compensation for monetary loss or other money owed?

Background and Evidence

There is no written tenancy agreement between the parties. However, the parties agree the tenancy began on January 1, 2016, and that the Tenant continues to occupy the rental unit. However, the parties disagree about the amount of rent due during the tenancy. The Tenant testified that rent was initially \$800.00 per month but was reduced to \$500.00 per month in August 2016. On behalf of the Landlords, I.B. testified that rent

was \$900.00 per month at the beginning of the tenancy and that it was reduced to \$500.00 per month in August 2016. The Tenant testified that the rent reduction was allocated based on rent of \$350.00 per month and BC Hydro service valued at \$150.00 per month; I.B. testified there was no such allocation. This distinction becomes important in the Tenant's calculations, below. The parties agreed the Tenant did not pay a security deposit or a pet damage deposit.

The Tenant's request for compensation was set out in a Monetary Order Worksheet, dated August 14, 2019. First, the Tenant claimed \$16,500.00 as a reimbursement of rent from August 1, 2016 to April 30, 2019 (33 months x \$500.00). The Tenant testified that BC Hydro discontinued service to the rental unit on or about August 5, 2016. As a result, the parties agreed rent would be reduced to \$500.00 per month. At that time, the Tenant was provided with an extension cord which provided electricity to the rental unit. According to the Tenant, the extension cord was disconnected by the Landlord on or about April 30, 2019.

Second, the Tenant claimed \$1,400.00 as a reimbursement of rent from May 1, 2019 to August 31, 2019 (4 months x \$350.00). According to the Tenant, rent decreased by this amount because the extension cord referred to above was disconnected by the Landlord.

In addition, the Tenant submitted that in a decision issued on July 2, 2019, an arbitrator ordered the Landlords to re-establish BC Hydro service to the rental unit by July 31, 2019, but that this has not occurred. On behalf of the Landlords, I.B. agreed BC Hydro service has not been reconnected. The file number of the related proceeding has been included above for ease of reference.

Third, the Tenant claimed \$294.23 for propane purchased from October 2016 to January 2018. As noted above, J.A. testified the Tenant has, at various times during the above period, purchased propane used to heat the rental unit. Receipts were submitted in support.

In response to all of the above, I.B. submitted that the Tenant's claim is "false" and "without merit". Further, he submitted that the Tenant agreed to continue the tenancy after BC Hydro was disconnected and has continued to reside in the rental unit in these conditions for roughly 3 years without issue. Further, I.B. submitted that the Tenant has already been compensated because, as agreed during the hearing, rent was reduced in August 2016 to reflect that BC Hydro service was disconnected.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for \$16,500.00 for a reimbursement of rent from August 1, 2016 to April 30, 2019, I find there is insufficient evidence before me to grant the relief sought. As the parties agreed during the hearing, rent was reduced to \$500.00 per month in August 2016 to reflect the lack of BC Hydro service. Adding the Tenant's claim to the previously-agreed reduction would effectively result in no rent being paid for the above period. As the Tenant did receive some benefit from the tenancy after August 2016, that would obviously be an untenable position. Further, even if no such agreement was made, the Tenant provided insufficient evidence to

suggest he took any steps to minimize his losses for almost 3 years after BC Hydro service was disconnected. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's claim for \$1,400.00 for a reimbursement of rent from May 1, 2019 to August 31, 2019, I find there is insufficient evidence before me to grant the relief sought. Specifically, the Tenant claims \$350.00 per month during the above period, which was the amount he testified was allocated to *rent* under the terms of agreement made in August 2016. However, I find there was insufficient evidence that rent and BC Hydro service were allocated as claimed by the Tenant. No documentary evidence such as a text message or an email was submitted in support. However, I accept the extension cord was disconnected by the Landlords as of May 1, 2019 and remains disconnected. Policy Guideline #16 confirms that "nominal damages" may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I find the Tenant suffered a loss when the extension cord was disconnected and find that a nominal damages award in the amount of \$150.00 is appropriate in the circumstances. This award is for the period from May 1 to July 31, 2019, only. In a decision dated July 2, 2019, an arbitrator ordered the Landlords to reconnect BC Hydro service by July 31, 2019. The decision confirmed the Tenant was entitled to reduce rent by a further \$250.00 per month until BC Hydro service remains disconnected after that date. Therefore, compensation for the period from August 1, 2019 forward is provided for in the decision issued on July 2, 2019 and has not been included in this Decision. The file number of the related proceeding is included above for ease of reference.

With respect to the Tenant's claim for \$294.23 for propane purchased from October 2016 to January 2018, I find there is insufficient evidence before me to grant the relief sought. As indicated above, the parties agreed during the hearing that rent was reduced to \$500.00 per month in August 2016 to reflect the lack of BC Hydro service. Further, even if no such agreement was made, the Tenant took no steps to minimize his losses for almost 3 years after BC Hydro service was disconnected. This aspect of the Tenant's claim is dismissed.

The Tenant did not provide evidence or make submissions with respect to the request for an order that the Landlords provide services or facilities required by the tenancy agreement or law. Therefore, no order has been made. However, the Tenant remains at liberty to make an application for dispute resolution if additional services or facilities required by the tenancy agreement or law are not provided.

Conclusion

The Tenant is granted a monetary order in the amount of \$150.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 13, 2019

Residential Tenancy Branch