



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NECHAKO RIVER RANCH LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT MNDCT PSF RR**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The agents PD and AD attended for the landlord ("the landlord"). The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. No issues of service were raised. Each party acknowledged receipt of the other party's evidence; each party had the opportunity to call witnesses and present affirmed testimony and written evidence. I find the tenant served the landlord in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began on March 17, 2012. Rent is presently \$1,308.13 monthly payable on the first of the month. A copy of the tenancy agreement was submitted as evidence.

The tenant requested the following:

1. An order that the landlord reimburse the tenant for \$45.00 for repairs to the lawnmower;
2. An order that the landlord replace carpet in the basement of the unit or, alternatively, that the rent be reduced to reflect the loss of the carpet;
3. An order that the landlord provide enough sand to the tenant during winter months for sanding of the road surrounding the gate to the unit.

At the hearing, the landlord agreed to request # 3 above.

With respect the lawnmower repairs, the parties agreed the tenant incurred \$45.00 in expenses with respect to recent repairs and that the landlord repaired the lawnmower a few months after the tenancy began. The tenant claimed the lawnmower belongs to the landlord, the tenant is required to maintain the lawn around the unit, and the landlord should compensate the tenant for the repairs.

In reply, the landlord stated he gave the lawnmower to the tenants and repaired it at the beginning of the tenancy so that they would have a working lawnmower. The landlord

testified there was no intention or agreement that the landlord would continue repairing the lawnmower which has only been used by the tenant.

The agreement does not reference the lawnmower.

With respect to the basement carpeting, the parties agreed that it was damaged by water and the tenant removed the carpet. The tenant stated the basement is used by the family and he requested either replacement or reduction in rental.

The landlord testified that the tenant is responsible for the water entering the unit when he overwatered a flower bed, which was denied by the tenant. The landlord stated that the carpet was over 20 years old.

Analysis

I have considered all the submissions and evidence presented to me in the 60-minute hearing, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must show that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the tenant to prove the tenant is entitled a claim for a monetary award.

Reference to each of the tenant's claims follows.

Lawnmower repairs

The parties agreed the tenant incurred \$45.00 in expenses to repair the lawnmower.

Otherwise, there is conflicting oral evidence by the parties. Neither party provided any documentary evidence regarding ownership of the lawnmower and the obligation to repair. As stated, the landlord claimed he gave the lawnmower to the tenant. The tenant stated the lawnmower belonged to the landlord with whom rests a duty to repair.

Both parties provided credible testimony. However, considering the conflicting evidence, I have concluded that the landlord's version of events is the more likely. For almost seven years, the tenant has used the lawnmower. I find it more likely than not that the landlord intended to give the lawnmower to the tenant.

I accordingly find the tenant has failed to establish this aspect of the claim on a balance of probabilities. I find the tenant has the obligation to repair the lawnmower which belongs to the tenant. I dismiss the claim without leave to reapply.

Carpet

The parties agreed that an old carpet, originally in the basement of the unit, was damaged by water and removed two years ago.

For the landlord to be held responsible for the replacement of the carpet or a reduction in rent, the tenant must establish that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party. The only evidence is the conflicting testimony of the parties.

In the absence of any additional evidence, I find the tenant has not established on a balance of probabilities that the damage to the carpet stemmed directly from the violation of the agreement or a contravention on the part of the landlord.

I therefore dismiss the tenant's claim in this regard without leave to reapply.

As the tenant has been partially successful as the landlord agreed to one of the tenant's claims, I direct that the tenant be reimbursed one-half of the filing fee. I direct that the tenant be permitted to deduct \$50.00 from rent on a one-time basis only.

Conclusion

As agreed by the parties, the landlord is ordered to provide enough sand to the tenant during winter months for sanding of the road surrounding the gate to the unit.

The tenant's claims are 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: October 08, 2019

Residential Tenancy Branch