



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOPPCO DEVELOPMENT &
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNRT RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and,
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses. The landlord testified that the tenant did not serve the Notice of Hearing and Application for Dispute Resolution and he found out about the hearing from a Residential Tenancy Branch reminder email and he obtained a copy of the tenant's Notice of Hearing. As such, I find that the landlord was sufficiently served with the Notice of Hearing and Application for Dispute Resolution pursuant to section 71(2)(c) of the Act.

Preliminary Matter: Service of Evidence

The tenant admitted that they did not serve their evidence directly on the landlord. Rather, the tenant testified that she served her evidence on another legal entity, CAC. The tenant testified that, in a previous Residential Tenancy Branch dispute with CAC which involved a different rental unit, CAC advised the tenant to serve future applications for dispute resolution directly on CAC. The landlord testified that he had no

knowledge of who CAC was and CAC did not have authority to accept service on behalf of the landlord. I find that the tenant did not serve their evidence on the landlord.

Residential Tenancy Branch Rules of Procedure, sections 3.1 states that regarding service of evidence:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following: a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution; b) the Respondent Instructions for Dispute Resolution; c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]. See Rule 10 for documents that must be served.

In this matter, the tenant has failed to serve their evidence in compliance with the *Residential Tenancy Branch Rules of Procedure*, sections 3.1. I find that the admission of the tenants' evidence would prejudice the landlord and result in a breach of the principles of natural justice. Accordingly, all of the tenants' evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property pursuant to section 65?

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33?

Background and Evidence

The tenant testified that tenancy lasted from May 2009 until the end of July 2019. The tenant testified that during the they were required to perform repair services for the landlord without compensation. The tenant also testified that they did not have a refrigerator in the rental unit for two years and the hot water tank did not function causing excessive electric utility expenses.

The tenant also complained that the landlord directed the police to break into the rental unit twice and assault them. In addition, the tenant testified that the landlord directed the police to remove the tenant's door from the hinges. The tenant testified that personal property was stolen after the door was removed.

The landlord denied the tenant's allegations. The landlord testified that the refrigerator did not work because the tenant unplugged the refrigerator. The landlord testified that all repairs were timely made and a contractor was sent within one day to repair the hot water tank.

The landlord testified that they were no involved with the police actions. The landlord testified that they did not call the police or request the police enter the rental unit or restrain the tenant. The landlord testified that they only became aware of the police activity afterwards.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

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

I find that the tenant has failed to provide sufficient evidence to establish that, on the balance of probabilities, that the landlord engaged in the alleged wrongful conduct.

I find that the likelihood that the events occurred in the manner described by the tenant to be very remote. As such, and in the absence of corroboration, I find the tenant's testimony to not be sufficiently credible or reliable. As such, I find that the tenant has failed to provide sufficient evidence to establish their claim on the balance of probabilities.

For the forgoing reasons, I dismiss the tenant's claims.

Conclusion

The tenant's application is dismissed.

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 22, 2019

Residential Tenancy Branch