



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR AAT MNCD PSF
Landlord: OPR MNR FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant originally filed their application September 06, 2019 pursuant to the *Residential Tenancy Act* (the Act) to dispute the landlord's 10 Day Notice to End for Unpaid Rent, for access to the rental unit, and a Monetary Order for damage and loss of \$7393.00.

The landlord originally filed their application September 12, 2019 for an Order of possession, a Monetary Order for unpaid rent of \$750.00 and recovery of the filing fee.

Both parties attended the hearing. The parties each acknowledged receiving the application and all evidence of the other. The parties were given opportunity to discuss their dispute, provide testimony, present all *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all the *relevant* evidence that they wished to present.

Preliminary matters

The tenant submitted an abundance of late evidence to the proceeding (October 18, 2019). The landlord having received the late evidence within the time prescribed I have admitted the late evidence.

Near the outset of the hearing the parties confirmed that the tenancy ended by the tenant vacating the rental unit in the first week of October 2019. Therefore, the landlord acknowledged regaining possession of the rental unit, stated they were no longer seeking the remedies sought by their original application and thereby effectively

withdrew their application. As the landlord's withdrawing their application does not prejudice the tenant I have accepted the landlord's withdrawal and their application was effectively preliminarily **dismissed**, without leave to reapply.

As a result of the above, the tenant confirmed that they were solely seeking compensation for their monetary claim. Therefore, the hearing proceeded on the merits of the tenant's application, as applicable.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed *relevant* evidence in this matter is as follows. The subject tenancy began February 16, 2019. During the tenancy the payable rent was in the amount of \$750.00 due in advance on the first day of each month. The tenancy ended on or about October 06, 2019 when the tenant vacated the rental unit.

Tenant's application

The tenant claims that during the month of April 2019 and periodically thereafter they were without hot water, for a period of 18 days in April 2019 alone. Upon the landlord's assessment of the issue the landlord discovered the hot water supply had been turned to low by another occupant of the residential property whom had control of the hot water supply. The tenant also claims that the power supply to the rental unit, also controlled by the same other occupant of the residential property, was disrupted on occasion without clear explanation and that as a result the tenant suffered a loss of groceries approximately \$250.00 in value. The landlord did not dispute these portions of the tenant's claim.

The parties agree that the landlord took the tenant to the hospital with injuries on September 01, 2019. The tenant testified that after waiting in the hospital emergency unit they left the hospital on their own decision.

On September 02, 2019 the landlord gave the tenant a 10 Day Notice to End Tenancy for unpaid rent (Notice to End), which they placed in the tenant's mailbox.

On September 03, 2019 the tenant returned to the hospital and was admitted. On the same day the tenant's parents were at the rental unit removing some of the tenant's personal belongings for safekeeping. They also replaced the lock and key of the rental

unit and gave the landlord a key. The tenant claims their parents were informed by the landlord that the tenant owed rent and that they ran the risk of having their possessions removed out of the rental unit, “out in the yard”. The landlord disputes they informed the tenant’s parents, threatening to remove the tenant’s belonging from the rental unit.

On September 05, 2019, with the tenant still in hospital, the parents returned to remove all the remaining tenant’s belongings, taking them out of the City to their farm property where they stored them, purportedly covering them with tarps.

On September 06, 2019 the tenant was discharged from hospital returning home to find all their possessions had been removed. The tenant filed to dispute the landlord’s Notice to End. Subsequently, the tenant proceeded to retrieve their belongings from their parent’s property and brought them back to the rental unit.

The tenant claims that while their belongings were at the parent’s farm property they became subjected to damage from the weather, muddying of the belongings, urine and droppings from rats and other related damage from the storage.

The tenant claims that the landlord should be responsible for any loss they suffered to the condition or deterioration of their belongings because the landlord had no right to threaten removal of their belongings, as they purportedly stated to the tenant’s parents, and compelling his parents to remove them. Again, the landlord denies saying the tenant’s belongings were at risk. The tenant provided a letter from their parents stating the landlord told them they had a, “legal right to move all his stuff”, therefore to avoid possible vandalism or theft the parents removed the belongings.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant’s claim

In this matter the burden of proving claims of loss and damage rests on the claimant (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 claimant (tenant) take reasonable steps to mitigate or minimize the loss?

Section 7 of the Act outlines the foregoing 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 each component *of the following test*.

1. Proof the loss exists,
2. Proof the damage or loss 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 the 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 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 that while I accept the landlord's statements may have contributed to certain understanding and perceptions in this matter vis a vis the tenant's claim of damaged belongings, I find the tenant has not shown that the landlord was directly negligent, or that the landlord's negligence or non-compliance with the *Act* directly resulted in the tenant's loss respecting their personal property or other costs the tenant claims in respect to their personal belongs. The tenant's evidence is that their loss occurred through the circumstances of removing and storing their belongings generated by their parents.

On the balance of probabilities, I find the tenant has not met the test for damage and loss of their personal belongings or costs associated with transporting their belongings and as a result **I must dismiss** the tenant's application of their claim for damage and loss of their personal belongings, without leave to reapply.

On the other hand, on balance of probabilities, I find enough evidence that the tenant suffered a loss of hot water service to the rental unit for at least 18 days, for which I grant the tenant the set amount of **\$100.00**. I further find, on balance of probabilities, that the landlord, via a lack of diligence in preventing a power disruption to the rental unit must compensate the tenant for a loss of groceries, which I set at **\$200.00**.

I find the tenant has not provided sufficient evidence to support the balance of their monetary claim.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$300.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in the above terms, without leave to reapply.
The landlord's application was withdrawn and 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: October 22, 2019

Residential Tenancy Branch