



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNRT MNSD

Introduction

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

- return of all or a portion of the security and pet deposits pursuant to section 38 of the *Act*;
- a monetary order for compensation for the cost of emergency repairs paid for by the tenant pursuant to section 33 of the *Act*; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence included with that package. The tenant also served the landlord with another package of evidence by leaving it on the windshield of the landlord's vehicle.

Service by leaving the documents on the windshield of a vehicle is not one of the acceptable methods for serving documents as set out in section 88 of the *Act* noted below:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

As such, I find that the tenant failed to comply with the requirements of section 88 of the *Act* in serving this package of evidence, and therefore I have not considered the tenant's evidence not served in accordance with the *Act*.

The tenant confirmed receipt of the landlord's evidence.

Based on the testimonies of the parties, I find that the notice of this hearing and the evidence for this hearing were served in accordance with the *Act*, with the exception of the tenant's evidence left on the landlord's windshield.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, or a doubling of the security deposit?

Is the tenant entitled to a monetary award for the cost of emergency repairs paid for by the tenant?

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenant's application, received by a Service BC office on September 6, 2019, sets out three heads of claim, as follows:

- Return of part or all of the security or pet damage deposits in the amount of \$325.00;
- Repayment for the cost of emergency repairs made by the tenant in the amount of \$1,500.00;
- Compensation for monetary loss or other money owed in the amount of \$15,000.00 for lost income and \$1,300.00 rent paid in advance.

Therefore, the tenant's original application claim totalled \$18,125.00, as set out in the Application for Dispute Resolution. The tenant later submitted an Amendment to Application for Dispute Resolution with a Monetary Order Worksheet, which was illegible and appeared to total over \$21,000.00. I decline to consider the tenant's Amendment request as the Amendment does not clearly set out what aspect of the tenant's original Application is being Amendment and is illegible due to the faded and small print written in the margins outside of the worksheet table. As such, I have only considered tenant's monetary claim as set out in the original Application.

The tenant also claimed that he was illegally evicted by the landlord. I advised the tenant that he moved out of the rental unit on August 31, 2019 and did not submit his Application for Dispute Resolution until September 6, 2019, therefore any issue regarding a dispute pertaining to a notice to end tenancy is no longer valid given the tenant moved out of the rental unit, therefore the tenancy has ended.

The tenant and landlord had a prior tenancy agreement for a different dispute address. I explained to the parties that I would only consider issues in this hearing pertaining to the dispute address provided for the tenancy agreement in relation to this hearing – not the previous tenancy agreement. However, the parties are at liberty to submit an

Application for Dispute Resolution in relation to the prior tenancy agreement at the prior dispute address, within the time limits provided in the *Act*.

A written tenancy agreement for the tenancy agreement under dispute in this matter was submitted into evidence by the parties. According to the terms of this tenancy agreement, the tenancy began May 1, 2019 with monthly rent of \$800.00 payable semi-monthly on the 1st and 15th days of the month. However, the parties confirmed that the landlord reduced the monthly rent to \$650.00.

The parties provided conflicting testimony regarding whether a security deposit had been paid for the tenancy agreement under dispute in this matter, given that the parties had a previous tenancy agreement. The tenant claimed he had paid a \$325.00 security deposit while the landlord disputed the claim. The landlord submitted into documentary evidence text messages with the tenant in which the tenant asked to borrow against the security deposit, which the landlord agreed to. As such, the landlord claimed that she no longer held the security deposit as it had been returned to the tenant.

The tenant confirmed that he did not pay for any emergency repairs as defined under the *Act* as he only claimed he had done painting, and that he did not have any receipts submitted into evidence to support his claim of \$1,500.00 for emergency repair costs.

The tenant claimed \$15,000.00 for lost income as he had lost employment due to being late for work as a result of restrictions on his ability to access the washroom facilities at the rental unit to get ready for work on time. The landlord disputed the tenant's claim and asserted that the tenant lost his employment due to work performance issues and his failure to get up for work on time.

Both parties confirmed that the tenant failed to pay rent for May, June, July and August 2019 (totalling \$2,600.00). Both parties confirmed that the tenant paid the landlord a lump sum of \$5,500.00 in August 2019. Both parties confirmed that \$2,600.00 of that lump sum payment covered the outstanding amount of rent owed for May to August 2019. The tenant claimed that this lump sum payment also included an advance payment of rent to the landlord for September and October 2019, totalling \$1,300.00 however as the tenant claimed he was forced to move out August 31, 2019, he sought the return of this payment from the landlord as part of his claim. The landlord disputed the tenant's claim and testified that the \$5,500.00 payment only covered unpaid rent for the months of May, June, July and August 2019 (totalling \$2,600.00), and repayment of money loaned from the landlord to the tenant over the previous six months.

The tenant failed to provide any financial documentation to account for the money he borrowed from the landlord to demonstrate that the \$5,500.00 was a repayment of the loaned money and the additional months of rent for September and October 2019. The landlord provided an accounting of the money she loaned to the tenant, along with copies of the e-transfer receipts as evidence that the \$5,500.00 provided to her by the tenant was payment of the unpaid rent owed and repayment of the loans, and did not include prepayment of rent for September and October 2019.

Analysis

In accordance with Rules 2.2 and 6.2 of the Residential Tenancy Branch Rules of Procedure, the tenant's claim is limited to what is stated in his Application for Dispute Resolution submitted on September 6, 2019. Further to this, section 59(2)(b) of the Act requires that an application for dispute resolution "include full particulars of the dispute that is to be the subject of the dispute resolution proceedings".

In a claim for damage or loss under section 67 of the *Act*, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of these four elements, the burden of proof has not been met and the claim fails. In this case, it is the tenant who bears the burden of proof to prove their claim, on a balance of probabilities.

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find that the tenant's Application for monetary compensation in the amount of \$18,125.00 should be dismissed. My reasons are as follows:

- I find that there was sufficient evidence submitted by the landlord to demonstrate that the tenant requested on several occasions to borrow against the security deposit and the tenant failed to provide evidence to demonstrate that he repaid the security deposit during the tenancy. As such, I find that the tenant failed to provide a preponderance of evidence to meet the burden of proof that the landlord continued to hold the security deposit.
- I find that the tenant failed to provide any evidence that he made emergency repairs as the tenant only mentioned painting, which is not an emergency repair as defined by the *Act*.
- I find that it was undisputed by both of the parties that the tenant failed to pay rent from May to August 2019 and that \$2,600.00 of the \$5,500.00 lump sum payment was the payment of rent owed to the landlord. The landlord provided an accounting of the remainder of the amount as repayment of money loaned to the tenant, whereas the tenant failed to provide evidence to support his claim that the remaining amount included repayment of loaned money and prepayment of rent paid for September and October 2019. As such, I find that the tenant failed to provide a preponderance of evidence to meet the burden of proof that the \$5,500.00 payment to the landlord included prepayment of rent for September and October in addition to the repayment of loaned money.
- I find insufficient evidence to support the tenant's claim that he is entitled to \$15,000.00 in compensation for lost wages. The tenant testified that he lost his job as a result of his late attendance at work, due to a restriction to his access to washroom facilities at the rental unit. As explained above, one of the elements that must be met for a claim of compensation is sufficient evidence that the other party contravened the *Act* or tenancy agreement, resulting in the loss. I find there are many reasons why a person may be fired from their position for performance issues, and the tenant failed to provide sufficient evidence that the landlord contravened the *Act* or tenancy agreement resulting in this loss.

Therefore, the tenant's application is dismissed in its entirety.

Conclusion

The tenant's application is dismissed in its entirety.

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: December 2, 2019

Residential Tenancy Branch