



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

In this dispute, the landlord sought compensation under section 67 of the *Residential Tenancy Act* (the “Act”) and recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on August 12, 2019 and a dispute resolution hearing was held on December 2, 2019. The landlord, the tenant, and a translator/representative for each of the landlord and the tenant attended the hearing. The parties were given an opportunity to be heard, present testimony, make submissions, and call witnesses. Neither party raised an issue with respect to service.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Whether the landlord is entitled to compensation as sought in their application.
2. Whether the landlord is entitled to recovery of the filing fee.

Background and Evidence

I note at the outset of this dispute that there was a complete absence of documentary evidence, as it pertains to any allegations of a breach of the Act by the tenant. Other than a submitted Monetary Order Worksheet, which I shall reproduce below, evidence consisted solely of oral testimony. There were a few other documents submitted, but they did not substantiate an argument that the tenant may have caused damage or loss. Further, it should be noted that the landlord previously applied for, and obtained, a monetary order against the tenant in the amount of \$2,750. However, the landlord erred in submitting the correct sequential order of their name at the time, and the order reflected an error in the landlord's correct name.

In this dispute, the landlord seeks the following compensation against the tenant for the following: (1) \$13,250.00 for five months of rental loss; (2) court and land title office costs in the amount of \$250.74; and, (3) registered mail costs in the amount of \$58.73. As I explained to the landlord's representative, the court costs, land title office costs, and registered mail costs are not recoverable through the Residential Tenancy Branch dispute process. The court and land title office costs would, depending on the circumstances, be recoverable through the Provincial Court of British Columbia. The Monetary Order Worksheet also includes a line in the amount of \$2,750.00, which the landlord clarified is now part of the total \$13,250.00 being claimed. Filing fees are also sought.

The landlord (through his representative) testified that the fixed term tenancy began April 15, 2018 and ended April 30, 2019. Monthly rent was \$2,650.00 and the tenant paid a security deposit. Next, the landlord testified that they incurred lost rent because they were (1) unable to obtain the key from the tenant in a timely manner after he moved out and thus could not rent it again, (2) out of a month's rent because the tenant did not pay (the landlord testified that there was a 10 Day Notice to End Tenancy issued), and (3) unable to rent the rental unit out for 3 more months due to damage caused by the tenant to the rental unit.

This damage included damages to the cooking countertop and ceiling, as well as damage to the floor and walls. The lost rent was incurred over the months of December 2018 until April 2019, inclusive. Other repairs included "clean up, repairs, and lights." Finally, the landlord ended up putting the rental unit on the market and sold it, though that took some time. In an attempt to mitigate the losses, the landlord tried to source out the cheapest options for these repairs.

In his testimony (through a representative) the tenant testified that there were issues with the rental unit when he moved in. He explained that it was not fair that he should be on the hook for costs related to damages not caused by him, either to the ceiling, the wall, or the kitchen countertop. Further, it was submitted that he should not be required to compensate the landlord for time in which they used to put the property on the market, versus actually renting the rental unit. It should "not have taken two months to fix" the rental unit. The tenant was silent as to the allegation that he did not pay rent.

In response to the landlord's testimony and submissions that the tenant did not return the key in a timely manner (thus resulting in rental loss), the tenant denied this and said that they returned it to the concierge. The landlord testified that the keys were not returned until September 2018.

Analysis

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. The onus to prove their case is on the person making the claim. In other words, it is the landlord who bears the burden of proof of proving their claim.

In this dispute, at its most basic, the landlord claims compensation for lost rent and damages to the rental unit because of the tenant's actions.

Section 7 of the Act states that 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.

The parties' oral testimony is in complete opposition. The landlord claims that the tenant's damage to the rental unit and failure to pay rent resulted in a loss in excess of \$13,000.00. The tenant denies those claims, and vehemently denies that he is liable for any of that amount.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, *the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim*. In this case, I find that the landlord has failed to provide any evidence, over and above their disputed oral evidence, that the tenant failed to comply with the Act. While the landlord frequently referred to evidence, such as videos, photographs, and a Condition Inspection Report, no such evidence was presented before me or introduced into evidence for consideration. Oral evidence alone, in the absence of anything to corroborate that testimony, is insufficient in cases where the other side has a different and reasonably credible story. And, while the credibility of witnesses and parties may occasionally tip the scales as it were, I had no evidence that either party was not credible in this hearing.

Taking into consideration all the oral testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for compensation against the tenant.

Conclusion

I dismiss the landlord's application in its entirety 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 Act.

Dated: December 3, 2019

Residential Tenancy Branch