



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNRT MNSD**

Introduction

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

- 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 for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant GD attended for the tenants, spouses ("the tenant") The landlord attended. The hearing process was explained, and the parties were granted an opportunity to ask questions.

Preliminary Issue:

The landlord denied receipt of the Notice of Hearing and evidence packages sent by registered mail in three parts by the tenant. The circumstances surrounding the mailing were explored with both parties providing testimony

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent in three parts as follows: August 24, 2019 (deemed received by the landlord under section 90 of the *Act* five days later, that is, on August 29, 2019), November 4, 2019 (November 9,

2019), and November 13, 2019 (November 15, 2019).

The tenant provided the Canada Post Tracking Numbers in support of service to which I refer on the cover page. The tenant stated the address to which he sent the registered mail; he testified that the address was the one for the landlord listed in the tenancy agreements. The final mailing was returned to the tenant marked, “refused”.

While the landlord acknowledged that the address used by the tenant was his sister’s address and was used by him “for a long time”, he stated that he had advised the tenant of a different address and accordingly did not receive the materials. The tenant denied that the landlord had informed him of any other address.

The tenant testified that he sent an email to the landlord on November 21, 2019 requesting any updated address and received no reply. The email address was one used by the landlord in communication with the tenant.

Issue

Did the tenant properly serve the landlord according to section 89?

Analysis

Section 89 sets out the rules for service of an Application for Dispute Resolution. One method is “by sending a copy by 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”.

The parties had a 6-year tenancy and the address used by the tenant was the mailing address provided by the landlord. The landlord acknowledged this.

I find the tenant’s evidence credible and reliable that he sent the registered mail to the landlord at the only residential address known to him. In reaching this conclusion, I found the tenant organized and clear in his testimony. The tenant submitted considerable documentary evidence detailing every aspect of the relationship and provided an abundance of information in support of his claim. I give more weight to the tenant’s testimony for these reasons.

Conclusion

I therefore find that the tenant served the landlord in accordance with section 89.

Preliminary Issue # 2

At the outset of the hearing, the tenant stated the security deposit had been refunded. Accordingly, the tenant withdrew the claim for the return of the security deposit.

Issue(s) to be Decided

Is the tenant entitled to the following:

- 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 requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. The hearing was 89 minutes and was acrimonious with the parties disagreeing on every aspect of the tenant's claim. I frequently asked the parties not to talk over one another. I warned the landlord about often interrupting the person speaking.

The parties agreed that the tenancy began in December 2012. Each year, the parties entered into a one-year fixed tenancy agreement. Rent was \$950.00 monthly payable on the first of the month; the security and pet deposits were returned to the tenant.

The tenant clarified his claims during the hearing as follows:

ITEM	AMOUNT
Rent for two weeks (July 15, 2019)	\$425.00
Loss of quiet enjoyment - \$50.00 a week for ten weeks	\$500.00
Reimbursement water bills for 2 years	\$527.79

Reimbursement repair bill - April 1, 2015	\$134.40
Reimbursement repair bill - January 18, 2018	\$94.50
Total claimed by tenant	\$1,681.69

Each item is discussed in turn.

Rent for two weeks (July 15, 2019)

The landlord gave the tenant a notice to leave the unit for landlord's use effective July 31, 2019. The landlord provided one month's rent as compensation and the tenant did not pay rent for the month of July 2019 as acknowledged by the tenant. The tenant vacated the unit July 15, 2019 and asserted he is entitled to two weeks' rent as he left the unit early after providing notice.

The tenant paid rent at the beginning of the month and the tenancy was month-to-month when the tenant vacated.

The landlord asserted he provided the compensation required by the Act and the tenant's claim for two weeks rent should be dismissed. He claimed the tenant could not leave unilaterally in the middle of the month and request rental reimbursement.

Loss of quiet enjoyment - \$50.00 a week for ten weeks

The parties agreed that in early January 2019 the unit was damaged by a water leak from the unit above and required repairs. At the beginning of the work, the parties did not know how long the job would take. The tenant submitted photographs showing the unit with considerable drying and construction equipment while the work was going on.

The tenant said that he and his wife lived in a "construction zone" while repairs were taking place. The tenant stated that the unit has only one bathroom and the bathroom was for a time inaccessible which was inconvenient to the tenants and required them to use facilities elsewhere. The tenant stated that important family visits had to be cancelled during this 10-week period.

The tenant provided particulars of the disruption in support of his assertion that they were seriously inconvenienced for ten weeks.

The landlord acknowledged that the repairs took place but stated that the period of the work was not as long as the tenant said. The landlord acknowledged that he had not been in the unit during the construction.

Further, the landlord denied that the tenant was inconvenienced to any significant degree.

Reimbursement water bills for 2 years

The tenant stated that he paid the water bills throughout the tenancy and estimated that the accounts were \$527.79 in the last two years. The tenant testified that the tenancy agreements specified that the tenant was *not* to pay water bills; only other utilities were the tenant's obligations. However, in error, the tenant understood the bills were the tenant's obligation. The tenant learned around the time of the end of the tenancy that he had been paying the bills in error.

The landlord asserted in reply that the parties had agreed the tenant would pay the utilities, the tenant did so, and the tenant should not be compensated for a payment that both parties thought was rightfully the tenant's obligation.

Reimbursement of two repair bills

The tenant stated that he paid the two repair bills for small plumbing issues and he requested reimbursement from the landlord. The tenant testified that he attempted to contact the landlord but did not receive a timely response. The tenant said that the landlord was frequently out of the country. Accordingly, as the problems were of a relatively minor nature, the tenant hired the plumber and paid the bills himself with an expectation that there would be no problem with reimbursement. The tenant submitted copies of the invoices.

The landlord said the tenant should not have done ahead and hired a plumber without getting his approval first. He denied that the tenant had actually incurred the expenses.

Analysis

I have considered all the submissions and evidence presented to me, 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 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 claims follows.

Rent for two weeks (July 15, 2019)

I find the landlord issued a notice to end the tenancy for landlord's use effective July 31, 2019 and provided one month's rent as compensation as required by the Act. I find the tenant is not entitled to additional rent because he left the unit two weeks' early.

I find that the tenant has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of his claim. I find the tenant has failed to establish a claim for two week's rent, and I dismiss this part of the claim without leave to reapply.

Loss of quiet enjoyment - \$50.00 a week for ten weeks

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means **substantial interference with the ordinary and lawful enjoyment of the premises**. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

(emphasis added)

I accept the tenant's evidence as supported by photographs and documents, that the construction in the unit was substantial interference with the tenant and his wife and their quiet enjoyment of the unit. The tenant was credible, articulate and clear in describing the effect of the repair work on their life and plans. The pictures vividly portray the chaos of a construction site. I find the tenant was genuinely disturbed and inconvenienced by the work. The tenant was living in the unit and experienced the

inconvenience personally.

On the other hand, the landlord did not actually go to the unit during this time. I therefore put more weight on the tenant's evidence. For these reasons, I accept the tenant's evidence that the repair work went on for ten weeks and caused the loss of quiet enjoyment claimed.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The tenant requested reimbursement of \$50.00 for each of the ten weeks of the repairs which I find is reasonable. In considering all the evidence and testimony, I find it reasonable to award the tenant the sum of \$500.00 for the period of the repairs of ten weeks. I therefore grant the tenant a monetary award in this amount.

Reimbursement water bills for 2 years

I find that the legal principle of estoppel applies to this situation of the tenant's claimed for reimbursement of water bills.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

The parties agreed that the tenant paid the water bill for the years of the tenancy. The parties agreed that the tenant did not object until the end of the tenancy. I find the parties established a pattern of a payment of utilities without objection by the tenant for the duration of the tenancy. I find the tenant cannot now object to the payments retroactively.

I find the tenant cannot now claim that the payments were in violation of the agreement after having accepted the situation without complaint for so long.

I therefore find the tenant has failed to meet the burden of proof with respect to this aspect of the claim and I dismiss this claim without leave to reapply.

Reimbursement repair bill

I accept the tenant's evidence for the reasons set out above with respect to this aspect of his claim I find that he attempted but could not communicate with the landlord to discuss these minor repairs and obtain permission in advance. I find that these repairs are ones that a landlord would normally see to. I find the tenant had a reasonable expectation that he would be compensated. I find that the circumstances of the parties' relationship were such that it was not necessary for the tenant to obtain the landlord's consent for such repairs and failure to do so does not preclude the tenant's claim.

I therefore find that the tenant has met the burden of proof on a balance of probabilities with respect to this aspect of the claim. I grant the tenant a monetary order for both repair bills: \$134.40 and \$94.50.

Filing fee

As the tenant has been substantially successful in this claim, I award the tenant \$100.00j for reimbursement of the filing fee.

In summary, I award the tenant the following:

ITEM	AMOUNT
Loss of quiet enjoyment - \$50.00 a week for ten weeks	\$500.00
Reimbursement repair bill	\$134.40
Reimbursement repair bill	\$94.50
Reimbursement filing fee	\$100.00
Total claimed by tenant	\$828.90

Conclusion

The tenant is granted a Monetary Order in the amount of **\$828.90**. This Order may be filed in the Supreme Court of British Columbia, Small Claims Division and enforced as an Order of that court.

This Order must be served on the landlord.

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 03, 2019

Residential Tenancy Branch