



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT LRE MNDCT RP RR

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the tenant to change the locks to the rental unit;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord make repairs to the rental unit or property; and
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

The tenant and the landlord attended the hearing and the landlord was accompanied by his spouse, who did not testify or take part in the hearing. The landlord and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other.

At the commencement of the hearing the tenant testified that she has vacated the rental unit and withdraws all claims except the claim for monetary compensation.

All evidence provided has been reviewed and relevant evidence is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of rent and damaged or lost items?

Background and Evidence

The tenant testified that this tenancy began about 4 ½ years ago on a month-to-month basis and ended on October 3, 2019 by mutual agreement. Rent in the amount of \$700.00 per month was originally payable on the 1st day of each month, which was increased over the years to \$750.00 per month. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 as well as a pet damage deposit in the amount of \$350.00, both of which are still held in trust by the landlord. The rental unit is 1 of 2 basement suites in a house, and the landlord did not reside on the property.

The tenant further testified that upon arriving home from the Labor Day long weekend in 2019 there were 4 or 5 leaks in the roof of the rental unit, part of which is exposed without a second floor above it. The leaky spots were in the kitchen, bedroom/living room with steady dripping onto the tenant's bed, near the sofa. The tenant also had to move her laptop. There was also a heavy smell of mold. The tenant contacted the landlord the next day asking if he could take care of the leak in the roof, but he wasn't helpful. The tenant borrowed a tent and camped in the back yard for a week during which the landlord didn't do any repairs or have anyone attend to look at it. The tenant was pretty frustrated and has chronic pain which added to the stress.

The tenant contacted the Residential Tenancy Branch around September 7 or 8 to find out about rights and responsibilities, and subsequently wrote a letter to the landlord requesting mold remediation and to have the roof patched. A copy has been provided for this hearing. The landlord attended the rental unit and told the tenant that he put soapy bucket of water on the roof, which he said would absorb better, and nothing leaked through. Nothing else was done. By mid-month the roof hadn't been dealt with nor carpets.

It was cold and uncomfortable staying in the tent and the tenant began couch surfing. On the 17th of September, without any notice to the tenant, the landlord had someone there to replace carpets. The tenant had no opportunity to move her belongings, and found new carpet had been laid upon returning and all of her belongings had been shabbily piled high with her box spring and mattress on top of the pile. Photographs have been provided for this hearing.

Around the 20th of September the tenant tried to re-arrange but her passport and driver's license were missing. The landlord said he didn't know anything about it. Other items were also damaged.

The tenant has provided a Monetary Order Worksheet setting out the following claims totalling \$913.00, which is amended to \$2,963.00 and includes 1 month's rent of \$750.00 for paying rent in October when the tenancy ended on October 3, 2019, and recovery of rent for the month the damages occurred, being September, 2019:

- \$243.00 to replace a passport;
- \$20.00 to replace the tenant's driver's license;
- \$30.00 for a porcelain elephant figure;
- \$80.00 for a traditional hand woven cedar headband;
- \$150.00 for a large soft-side suitcase;
- \$350.00 for ergonomic computer chair;
- \$30.00 for a folding guitar stand; and
- \$10.00 for a ceramic fish.

The passport that was missing was for a 10 year period and the tenant obtained it in 2018. The regular one costs \$160.00 but if it's considered lost or stolen a \$45.00 Administration fee is charged, in addition to the \$38.00 cost for the photograph and \$20.00 for a pick-up fee rather than having it mailed to the tenant. The tenant has not replaced it because she doesn't have the money. Nor has the driver's license been replaced.

The porcelain elephant figure was broken in a few places and could not be repaired.

The headband was made of cedar bark which the tenant hand-made, and can only be harvested once per year.

A leg had been broken off the suitcase making it not travel-worthy anymore. It was a few years old.

The back of the computer chair was broken and could not be secured in place anymore. The back was unsteady and the landlord removed it from the suite and tossed it in the back of his truck when the tenant moved out. The chair had been purchased new about 3 years prior. The arms had been torn previous, but it was still functional until it had been in the pile.

The guitar stand had padding which was ripped and a couple of chunks were torn off.

The ceramic fish was broken.

The tenant has provided copies of advertisements for the items as evidence of the costs to replace them.

The tenant had given the landlord part of the rent for October but put a stop-payment on it on September 25, 2019. The landlord placed a Mutual Agreement to End Tenancy on the tenant's door, prior to October 1, 2019, and the tenant agreed to move out. Rent wasn't yet due.

The landlord testified that he had been totally reasonable with the tenant. He received a letter from the tenant on or about September 8 and the landlord replied on September 10, 2019. The carpet was replaced on September 15 which was the soonest the landlord could have it done. The tenant wouldn't answer the landlord's calls so the landlord placed sticky notes on the door. The landlord tried several times, and given that the tenant had asked for repairs, the landlord replaced the carpet and he and his son moved the tenant's furniture and belongings with care. The landlord remained in the rental unit during the whole time the new carpet was being installed.

The landlord was also in the rental unit on September 11, 2019 to address the tenant's problems. There was nothing wrong with the roof, and the landlord testified that it seemed like the tenant just wanted to move out. The parties always talked on the phone and for the tenant to suddenly refuse to answer and expect some other form of communication is unreasonable.

The landlord did not see a driver's license or a passport.

Analysis

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

The *Residential Tenancy Act* states that (my underlining added):

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I have reviewed the photographs provided by the tenant, and there is certainly a pile of belongings with a box spring and mattress on the top. The tenant gave testimony as to the damaged items, and I find that element 1 in the test for damages has been established for at least some of the tenant's monetary claim.

I accept that the tenant stopped communicating with the landlord, and the landlord felt he was doing his due diligence by attending to assess the tenant's complaint of a leak and again to replace the carpet at the request of the tenant. However, the landlord did not do so in accordance with Section 29. The landlord ought to have given written notice and I am satisfied that had the tenant been aware of the work the landlord committed to and when, the tenant would have been present to assist with moving her belongings out of the way, or would have moved the belongings prior to the date the landlord intended to enter. Therefore, I find that the tenant has established element 2 in the test for damages.

With respect to element 3, I have reviewed all of the tenant's evidentiary material and specifically the advertisements. The first is for a ceramic elephant porcelain figure costing \$30.20. The second is for a cedar bark woven headband at \$25.00. The next is a soft side suitcase at \$129.99, and another for the lumbar support chair at \$281.99. The advertisement for the folding guitar stand shows a cost of \$24.53, and one for a fish shape ceramic door knob handle costs \$9.09. Those are the only items and amounts that the tenant has established which total **\$500.80**. I am not satisfied of what taxes might be payable on those items in the advertisements.

Further, I am not satisfied that the tenant has established that the landlord is responsible for loss of the passport or the driver's license, and I dismiss that portion of the tenant's claim. However, I am also satisfied that the tenant mitigated any damage or loss suffered by notifying the landlord of the leaks within 24 hours and again requested repairs in writing.

I was not able to view some of the landlord's evidentiary material, such as a response to photographs on the memory stick that was mailed to the landlord by the tenant, and one of the tenant surveys. However, the landlord has provided a copy of a cheque for \$375.00 dated September 25, 2019 which confirms that the tenant put a stop-payment on the cheque. I accept the undisputed testimony of the landlord that it was for half of the rent for October, 2019 and the landlord never received any other payment after that. Therefore, I am satisfied that the tenant did not pay any rent for October, 2019. Although no one has provided me with a copy of the Mutual Agreement to End Tenancy, the tenant testified that the parties mutually agreed in writing to end the tenancy effective October 3, 2019. The tenant's application to recover October's rent is dismissed.

The tenant also claims recovery of rent for the month of September, 2019 which is the month during which she notified the landlord of leaking in the rental unit and stayed in a tent or with friends. The tenant testified that she notified the landlord the day after returning from a vacation on the long weekend in September. She testified that the landlord was not helpful and did not complete any repairs during the week or so that the tenant stayed in the tent. The tenant requested repairs in writing on September 7, 2019, and testified that the landlord's response was "blowing her off," and by mid-month the roof hadn't been dealt with or the carpets. The tenant has provided photographs of what is described as wet carpets, and the landlord testified that there was no leak in the roof. Although I am not satisfied that the roof is what was leaking, the landlord did not dispute the tenant's testimony that the tenant slept in a tent for a week or more and with friends due to water leakage or damage. The landlord replaced the carpets on September 17, 2019, and given that the tenancy ended on the 3rd of October I find that

the tenant has established a claim of half a month's rent from September 17 to October 3, 2019, or **\$375.00**, for loss of use of the rental unit.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$875.80**.

This order is final and binding and may be enforced.

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 10, 2019

Residential Tenancy Branch