



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 634245 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 21, 2019. Extensive discussions on the tenant's first and second amendments resulted in the tenant cancelling the first amendment dated November 21, 2019 as it was a duplicate of the original application with the exception of an address change. Both parties confirmed that the tenant served the landlord with the second amendment dated January 6, 2020 in person which increases the monetary claim to \$7,325.00.

I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act with the notice of hearing package, the second amendment to the application for dispute and the submitted documentary evidence.

Preliminary Issue(s)

At this time the landlord stated that in a previous hearing the landlord obtained an order of possession which the tenant has complied with. The landlord stated as such the

notice to end tenancy is not necessary. The tenant confirmed that she did vacate the rental unit. As such, no further action is required for the tenant's request to cancel the notice. The hearing shall proceed on the tenant's amended monetary claim only.

The tenant's application was also amended to reflect the proper name of the landlord. The tenant named both the resident manager and the listed landlord (a numbered company) as the landlords. The named resident manager's name shall be removed as such.

At the conclusion of the hearing the tenant stated that she does not have a mailing address, but would accept service of the decision to her email address as provided on her application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2018 on a fixed term tenancy ending on April 1, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 31, 2018. The monthly rent began at \$650.00 payable on the 1st day of each month. A security deposit of \$325.00 was paid.

In this case, the tenant seeks an amended monetary claim of \$7,325.00 which consists of:

\$3,250.00	Return of Rent, 6 months at \$650.00
\$500.00	Estimated Moving costs
\$325.00	Return of Security Deposit
\$200.00	Loss of Food from moisture
\$3,050.00	Loss of Quiet Enjoyment/Harassment

The tenant seeks recovery of paid rent for a 6 month period due to living in rental unit with a leaky ceiling which caused mold and the tenant's loss of use of a bathroom and kitchen between June to December 2019. The tenant also seeks compensation of \$200.00 for the loss of food due to water damage. The tenant claimed that the landlord

was notified and had failed to make any repairs causing the tenant to live in this environment. The tenant relies primarily on the photographic evidence which shows water damage and mold on wood. The tenant stated that she did have use of the living room and bedroom. No calculations were made in the monetary request. The tenant submitted photographs of various food containers laid out on the floor as confirmation of damaged food stuffs.

The landlord disputes the tenant's claims stating that upon being notified in mid-June, the landlord immediately began an investigation into the leak and then subsequently the repairs for what was later determined as pipes leaking in the upstairs bathroom into the downstairs kitchen/bathroom areas. The landlord stated that the rental unit had two bathrooms. The landlord stated that the faucet and plumbing were replaced. The landlord also stated that the tenant was given a \$150.00 credit on monthly rent for the inconvenience while waiting for the repairs that were completed on August 23, 2019. The landlord has submitted photographs of the rental unit at the beginning of the tenancy, the date when the landlord attended to investigate the leak and upon completion of the repairs. The landlord argued that the tenant suffered no losses as no notification was given on damaged food stuffs at any time, but conceded that the tenant was inconvenienced as evidenced in the landlord's credit of \$150.00 per month. The landlord submitted in support of these claims copies of:

- A condition inspection report for the October 31, 2018 for the move-in
- Photograph of the specific bathroom and kitchen prior to move-in on October 29, 2019
- Photographs of the same specific bathroom/kitchen on August 12, 2019 during repairs
- Photographs of the same specific bathroom/kitchen on August 23, 2019 when repairs are completed
- Photographs of the kitchen ceiling during repairs and when completed
- Copies of invoices for repairs/renovations
- Copies of receipts for tenant's credited rent

During the hearing the tenant stated that she was cancelling the claim for moving costs of \$500.00, return of the \$350.00 security deposit and \$200.00 claim for loss of food. The tenant stated that she could not provide sufficient details of why the landlord was responsible for paying moving costs when she vacated in compliance with a 10 Day Notice and did not provide the landlord with her forwarding address in writing for return of the security deposit pursuant to section 38 of the Act.

The tenant seeks a monetary claim of \$3,050.00 for harassment as a result of the landlord serving multiple notice(s). The tenant referred to a 10 Day Notice that was served on October 29, 2019 for November unpaid rent. The tenant made reference to her documentary evidence package, but a review of the submitted evidence did not show a 10 Day Notice dated October 29, 2019. A review of the tenant's documentary evidence, section 8 shows a copy of a 10 Day Notice dated September 3, 2019 and a 10 Day Notice dated October 2, 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the tenant has cancelled items 2, 3 and 4 of the monetary worksheet, the below decision is in regards to items #1 and #5, which are:

\$3,250.00	Return of Rent, 6 months at \$650.00
\$3,050.00	Loss of Quiet Enjoyment/Harassment

I accept the evidence provided by both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Both parties confirmed in their direct testimony that a leak had occurred that affected the kitchen and downstairs bathroom. Although the tenant has argued that upon being notified, the landlord took no action in resolving the leak or water damage. This is contradicted by the landlord's testimony in conjunction with the invoices/receipts for repairs by the landlord and a rent credit given to the tenant for this period of time. The landlord also provided photographs of the affected area from the beginning of the tenancy, when the leak was reported and upon repairs being completed. Although the tenant suffered an inconvenience for the leaking ceiling, the tenant was provided a credit for the inconvenience and I find that the tenant has failed to provide sufficient evidence to an entitlement for additional compensation.

Conclusion

The tenant's application is dismissed 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 *Residential Tenancy Act*.

Dated: January 13, 2020

Residential Tenancy Branch