



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARDINAL WEST INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord MK ("landlord's agent") and landlord EK ("landlord owner") and the two tenants, male tenant RH ("tenant") and female tenant MH ("female tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 65 minutes.

The landlord owner confirmed that she was the co-owner of the rental unit, with her husband, and that she had permission to speak on his behalf at this hearing. The landlord's agent stated that she was the building manager for the landlord company named in this application and that she had permission to speak on its behalf. The landlord owner confirmed that the landlord's agent had permission to speak on behalf of both owners at this hearing.

The tenants intended to call the previous property manager of this rental unit, KE ("witness KE") as a witness at this hearing. She was excluded from the outset of the

hearing. The tenant agreed later during the hearing that witness KE's evidence was not relevant to the tenants' application, as the tenant said that she would be testifying about the landlord's agent who was previously a tenant in the same rental building. The tenant also stated that witness KE would be testifying about the landlord's allegations that the tenants caused damages to the rental unit, even though the landlord did not file an application for damages to be heard at this hearing. Therefore, witness KE did not testify at the hearing, with the consent of the tenants.

The tenant testified that the landlord was served with the tenants' notice of hearing and application for dispute resolution, by way of posting to the landlord's door. The landlord's agent stated that she did not receive the above documents from the tenants, but she called into the Residential Tenancy Branch ("RTB") and was informed of this hearing. The landlord's agent and the landlord owner both agreed to proceed with the hearing and deal with the tenants' application, despite not receiving a copy of the above documents from the tenants. I proceeded with the hearing based on the consent of both parties.

The tenants confirmed that they did not serve any written evidence or other documents to the RTB or the landlord for this hearing, except for the amendment to their application and their summons request, which the landlord's agent confirmed the landlord received. Both parties confirmed receipt of my interim decision, dated January 9, 2020, dismissing the tenants' summons request.

The tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's evidence package.

Preliminary Issue – Amendment to Tenants' Application

The landlord's agent confirmed receipt of the tenants' amendment to their application, increasing their monetary claim from \$15,000.00 to \$35,000.00 and asking to add the two landlord owners and the landlord's agent ("three landlords") personally as landlords-respondents to this application.

The tenant stated that the three landlords should be added because he said the landlord company named in this application did not have any assets and he would not be able to collect any judgment from it. The landlord's agent and landlord owner stated

that they did not consent to the three landlords being added as individual respondents to this application.

Both parties agreed that the landlord company named in this application was the landlord during this tenancy, not the three landlords personally. The landlord's agent maintained that the landlord company was indicated as the landlord on the parties' written tenancy agreement. Accordingly, pursuant to Rules 7.12 and 7.13 of the RTB *Rules of Procedure*, I informed both parties during the hearing that I would not be adding the three landlords as landlords-respondents to the tenants' application. I find that the tenants failed to provide documentary evidence that the landlord company had no assets to pay any monetary judgment and the tenants agreed that the landlord company was the proper landlord throughout their tenancy.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to increase their monetary claim from \$15,000.00 to \$21,728.70. The tenant confirmed that although he filed an amendment requesting \$35,000.00, the tenants only wanted to pursue a claim for \$21,728.70. The landlord's agent consented to this amendment during the hearing. The tenant repeatedly stated that he wanted to pursue the tenants' entire monetary application at the RTB, rather than the Supreme Court of British Columbia for a higher amount over \$35,000.00.

At the outset of the hearing, the tenant confirmed that the tenants moved out of the rental unit and they only wanted to pursue their monetary application. Accordingly, the tenants' application to cancel the landlord's 1 Month Notice and an order to comply, are both dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2014 and ended on November 12, 2019. Monthly rent in the amount of \$1,309.00 was payable on the first day of each month. A security deposit of \$587.50 was paid by the tenants and the landlord continues to retain this deposit.

The tenants seek a monetary order of \$21,728.70 plus the \$100.00 application filing fee. The landlord disputes the tenants' entire application.

The tenant testified regarding the following facts. The tenants seek four months' rent of \$5,236.00, or twelve months' rent, as determined by me, for a "renoviction penalty." The landlord did not serve the tenants with a 2 Month Notice to End Tenancy for Landlord's Use or Property ("2 Month Notice") nor a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("4 Month Notice"). The landlord was "smart" in not issuing the tenants with a 2 Month Notice or 4 Month Notice. The tenants had to vacate the rental unit pursuant to a two-day order of possession issued at a previous RTB hearing by a different Arbitrator. The tenants seek \$1,500.00 for hotel bills that the landlord promised to pay, \$60.00 for laundry expenses, \$2,244.00 for meals, \$500.00 for "wrecked clothes," \$587.50 for the return of their security deposit, and \$540.00 for partial rent and having to move to a new unit. The tenants also seek \$1,798.00 for both tenants to get "CAT scans for asbestos testing" for their lungs, \$8,000.00 for lost wages for the tenant, \$300.00 for junk furniture removal, and \$100.00 to remove a ruined mattress, due to a leak. The tenants are "horrified by the fraudulent statements made to previous Adjudicators" by the landlord at the RTB. The landlord has ruined the "spirit and text of the legislation."

The landlord's agent testified regarding the following facts. The tenants were not "renovicted." The tenants have not provided any receipts, evidence or proof of their monetary claims. The problems with the tenants started in November 2019. The tenants badgered and harassed the landlord's licensed contractors and plumbers. The landlord did not cash the tenants' December 2019 rent cheque, the tenants did not pay for January 2020 rent, and the tenants did not provide access to the rental unit for the landlord to complete emergency repairs. The tenants left belongings inside the rental unit after they vacated. The landlord gave the tenants a "goodwill amount" of \$500.00 on November 12, 2019, which the tenant confirmed during the hearing.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimony and their demeanour at the hearing. Considered in its totality, I found the landlord's agent and landlord owner to be more credible witnesses than the two tenants. I found the landlord's agent and landlord owner to be forthright, providing their evidence in a calm, candid and straightforward manner. They provided consistent and logical testimony.

Conversely, I found that the two tenants were argumentative during the hearing. They did not provide their testimony in a calm and candid manner. They provided inconsistent testimony. The female tenant was yelling at the tenant in the background throughout the hearing. The tenant interrupted the landlord's agent, the landlord owner and me during the hearing. When I asked the tenant relevant questions about his tenancy, he became upset and agitated, often refusing to answer my questions and instead arguing about the landlord's fraudulent behaviour. When given the opportunity to present evidence, the tenant chose to provide irrelevant rather than substantive information, focusing on previous RTB hearings and his claims that the landlord made fraudulent statements. The tenant frequently commented that he was in talks with the Attorney General and he would be filing a judicial review of my decision, regardless of the outcome.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application of \$20,363.00, without leave to reapply. The tenants only provided a verbal breakdown of \$20,950.50 during the hearing, not a monetary order worksheet, nor the

amount that they claimed of \$21,728.70. I repeatedly confirmed the above amounts with the tenants during the hearing.

I find that the tenants were unable to provide documentary evidence to prove their monetary claims. The tenants did not even describe their claims in detail during the hearing, despite me asking whether they wanted to explain their claims. They simply indicated numbers for different claims, indicating that they were entitled to those amounts. I find that the tenants did not show how or why the landlord was responsible for their monetary losses.

The tenants did not receive a 2 Month Notice or a 4 Month Notice, to entitle them to two months' rent or twelve months' rent, pursuant to section 51 of the *Act*. Both parties agreed that the tenants left pursuant to a two-day order of possession granted at a previous RTB hearing. Therefore, the tenants' application for \$5,236.00 for a four-month "renoviction" penalty is dismissed without leave to reapply.

The tenants did not provide hotel bills, receipts, or bank records to justify their claim for \$1,500.00. The tenants did not provide their hydro bill for \$85.00 or their receipts or bank statements for having paid this amount. The tenants did not provide their estimates, invoices, receipts, or bank records for the \$60.00 in laundry expenses, \$2,244.00 in meals, \$500.00 in wrecked clothes, \$540.00 for moving in and paying rent to a new landlord, \$300.00 for furniture junk removal, or \$100.00 to remove a ruined mattress. The tenant did not provide his employment records, paystubs or wage loss records for having lost \$8,000.00 in wages. The tenants did not provide medical records, invoices, estimates, receipts or bank documents to show that they had to pay for "CAT scans" for asbestos in their lungs. All of the above claims are dismissed without leave to reapply.

The tenants did not apply for the return of their security deposit of \$587.50 in their original application or the amendment to their application. It is a separate claim for the return of their security deposit, pursuant to section 38 of the *Act*. Both parties agreed that the tenants had not provided their written forwarding address to the landlord, as required by section 38 of the *Act*. Therefore, both parties are at liberty to file future applications with respect to this security deposit, at the RTB.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

At the outset of the hearing, I notified both parties that my decision would be provided in written reasons and not orally during the hearing. At the end of the hearing, the tenant stated that he would be filing for a judicial review of my decision. I asked how he was filing for judicial review if he did not know the outcome of my decision. The tenant stated that it was “nothing against you, you did nothing wrong” but he wanted to file for judicial review because of fraudulent and false statements made by the landlord at this hearing and previous RTB hearings.

Conclusion

The tenants’ security deposit of \$587.50 is to be dealt with in accordance with section 38 of the *Act*. Both parties are at liberty to file future applications at the RTB with respect to this deposit.

The remainder of the tenants’ 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 27, 2020

Residential Tenancy Branch