



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, RPP, FFT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order to return personal property pursuant to section 65;
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

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

Are the tenants entitled to an order compelling the landlord to return their personal property?

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

Background, Evidence

The tenant's testimony is as follows. The tenancy began on January 21, 2017 and ended on March 10, 2018. The tenants were obligated to pay \$500.00 per month in rent. The tenants testified that they rented a mobile home on the property of the

landlords. RF testified that the mobile home had many plumbing, electrical and heating issues. RF testified that he had to pay for many repairs from his own pocket and seeks the recovery of those costs. RF testified that he also had to pay to have a snow plow come plow the property for him to have a crane come and remove his 40 foot storage container. The tenants testified that the landlord has not returned their bird bath or bicycle to them and they want them back.

The tenants are applying for the following:

1.	Cameo Plumbing	\$524.21
2.	Non-Certified wood stove	400.00
3.	Install Wet Certified stove	369.76
4.	Snow Plowing	1879.50
5.	Caribou Crane- storage container	4987.50
6.	Loss of Functional Rental	2500.00
7.	Filing Fee	100.00
	Total	\$10,760.97

The landlords gave the following testimony. EL testified that he was shocked to hear the claims as made by the tenants. ML testified that the home had been occupied for many years by other tenants with no complaints and the past two years by her 92 year old father who “is as happy as a clam in there”. EL testified that the tenants took on these repairs without notifying him or asking him permission to conduct them. EL testified that the tenants didn’t lose any functional use of the home at any time and that the tenants are simply trying to “win the lottery” by paying a hundred dollars to have this hearing. EL testified that the bird bath and bicycle are frozen to the ground and that the tenants are welcome to pick them up at anytime as he doesn’t want them. EL testified that he was nice enough to allow the tenants to put the large storage container on the property and doesn’t think he should have to pay to move it.

Analysis

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 arguments are reproduced here. The principal aspects of the tenants claim and my findings around each are set out below. It is worth noting that RF was extremely disorganized when presenting his claim. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain the amount he noted on the application and what he was seeking on the day of the hearing. Much of the tenants claim lacked clarity or logic. The tenant presented his evidence in a very disjointed and vague fashion. In addition, when I put

simple straight forward questions to RF, he would give editorial comments and give information that was neither clear or relevant. The tenants' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to his monetary calculations.

Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Monetary Claim - \$ 10, 660.97

The tenants have failed to satisfy me that they have provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the *Act*. Specifically, the tenants have failed to provide sufficient evidence to show that they took reasonable steps to mitigate or minimize the loss or damage being claimed in regard to the various repair claims. Although the tenants submitted extensive photos and other documentation, they have not provided any documentation to show that they made the landlord aware of the issues, their displeasure with the unit, or requests to have the issues corrected. In addition, they have not provided sufficient evidence to show that

the landlord had not reasonably plowed the snow off of the roads for access. In regard to the tenant's storage unit, it is the tenant's responsibility to remove their own personal items, regardless of size. The landlords repeatedly stated that they were shocked when they were served with the tenant's application and the items claimed for.

As noted above, a party making a claim must satisfy all four factors to be granted an amount under Section 67 of the Act. Based on the insufficient evidence before me and the lack of mitigation on the tenants' part, I dismiss this portion of the tenants claim.

The tenants have not shown reasonable attempts to obtain the bird bath or bicycle, accordingly; I need not make an order for the return of those items and dismiss that portion of their claim. The tenants are not entitled to the recovery of the filing fee as they have not been successful in any portion of their application, accordingly; this portion of their claim is dismissed.

Conclusion

The tenants' application is dismissed 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 *Residential Tenancy Act*.

Dated: March 31, 2020

Residential Tenancy Branch