



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.C. Mitchell Development & Building Company Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNDCL-S, MNRL-S, FFL

Introduction

In this dispute, the landlord sought compensation against their former tenant pursuant to section 67 of the *Residential Tenancy Act* (the “Act”) and recovery of the filing fee pursuant to section 72 of the Act. I note that, while the landlord’s application of February 28, 2020 originally included a request for an order of possession, the landlord was ultimately granted an order of possession in another dispute resolution hearing on March 20, 2020. As such, only the monetary aspect of this file will be addressed herein.

A dispute resolution hearing was held, by way of telephone conference, on May 5, 2020. The landlord’s legal counsel and two representatives of the landlord (a corporation) attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

Landlord’s counsel and one of the landlord’s representatives confirmed that they had served the latest Notice of Dispute Resolution Proceeding package on the tenant on April 17, 2020. Based on the undisputed evidence of the representative I find that the tenant was served in compliance with the Act, albeit rather late.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application.

Issues

1. Is the landlord entitled to compensation as sought?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

At the outset I note that I have relied substantially on the written submissions and affidavits submitted into evidence. The content and information contained in the aforementioned documentary evidence were affirmed and confirmed by the parties present at the hearing, and I provided the parties with the opportunity to clarify and add anything that they believed to be relevant. A few clarifications and corrections to the dollar amounts were made, of a minor nature.

Briefly, the tenant has resided in the rental unit for approximately fifteen years. On September 24, 2019, the landlord entered into a Contract for Purchase and Sale with buyers for a sale price set at \$400,000.00. The tenant, who had been issued a 10 Day Notice in January 2020, disputed the notice and stayed past the sale deadline of January 24, 2020.

On March 20, 2020, an arbitrator with the Residential Tenancy Branch issued an order of possession to the landlord based on a 10 Day Notice for Unpaid Rent that had been served in January 2020 on the tenant. Despite receiving the order of possession, the tenant refused to vacate the premises.

As a result of the tenant's overstay, the buyers agreed to extend the sale deadline to February 13, 2020. The tenant refused to leave. The buyers then agreed to another extension for the deadline for the sale to March 27, 2020, at a reduced price of \$395,000.00. While the tenant was served with a copy of the order of possession on March 25, 2020, he did not vacate the premises. Consequently, the landlord could not, according to the landlord's evidence, complete the sale. After further negotiations between the landlord and the buyer, the parties negotiated a sale price of \$385,000.00.

On March 25, 2020, the landlord attempted to file the order of possession in Supreme Court in order to obtain a writ of possession. However, the court registry did not accept the application due to restrictions that were going into effect in response to the COVID-19 pandemic and emergency measures being promulgated.

The sale of the property was completed on April 9, 2020. As of April 9, 2020, to the landlord's knowledge, the tenant was still living in the rental unit.

The landlord argues that, as a result of the ongoing delays caused by the tenant's refusal to vacate the property, the landlord (the seller) had to reduce the selling price by \$15,000.00 in order to keep the sale. Extensions to the closing date were granted by the

buyers only on the condition of the price being reduced. Copies of the property transaction documents were submitted into evidence, which reflected this price reduction. The landlord claims this amount due to the tenant's refusal to vacate the rental unit in January 2020 when the 10 Day Notice to End Tenancy was effective.

The landlord also seeks compensation for unpaid rent in the amount of \$3,700.00, representing unpaid rent from November 2019 to March 2020, inclusive. The landlord ultimately transferred the property to the new owners on April 9, 2020.

Finally, the landlord seeks compensation against the tenant for legal fees incurred in the amount of \$10,136.35. The landlord argued (in their written submissions and affidavits) that these fees were incurred as a result of the tenant's refusal to move and the ensuing back-and-forth between the tenant, the landlords, and the buyers. Copies of the legal invoices were submitted into evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord provided affidavit and documentary evidence to support their submission that the tenant did not pay rent for November 2019 to March 2020, inclusive. Indeed, there is a reference in an earlier decision (which resulted in the order of possession being granted on March 20, 2020) to the tenant admitting to not paying rent. There is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent in the amount of \$3,700.00. But for the tenant's refusal to pay rent, the landlord would not have suffered this amount of loss.

Third, the amount of the rent is established by way of documentary evidence, and, fourth, the landlord filed for dispute resolution, which is a reasonable step in minimizing loss. For these reasons, I award the landlord a total of \$3,700.00.

I note that, while the landlord's application indicated there was a claim against a security deposit, the landlord's representatives did not have any knowledge as to where or what amount that security might be. As such, I need not consider that aspect of the application.

Claim for Loss from Reduced Sale Price

Landlord's counsel argued and submitted that the landlord "would not have experienced the reduction of \$15,000.00 in sale price if the Tenant had not breached the *RTA* and the Tenancy Agreement by failing to pay rent and by failing to vacate the Rental Unit."

First, it is clear that the tenant breached section 26 of the Act by failing to pay rent. Further, it is clear, I find, that the tenant breached an order issued under section 55(3) by overholding in the rental unit.

However, I am not persuaded that but for the tenant's failure to pay rent, or his overholding, the landlord suffered a "loss." First, I find that the tenant's failure to pay rent under section 26 of the Act was in no way related to the ability of the landlord seller to complete the sale of the property to the buyer. The buyers agreed to extensions of the closing date, but there is no indicate that the buyers would not proceed with a purchase without the tenant having first vacated the property.

Second, that the landlord completed the sale of the property on April 9, 2020 – with the tenant still residing in the rental unit – significantly weakens any argument that the tenant's failure to vacate actually weakened the prospect of the deal closing. And, while there was a reduction in price from \$400,000 to \$395,000 to \$385,000, nowhere is there evidence that the agreement to reduce the price was based solely on, or because of, the tenant's ongoing occupation of the rental unit. Nowhere is there evidence, such as testimony or affidavit evidence, from the current landlords (the purchasers), to establish that they would have pulled out of the deal if the tenant did not vacate the property.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not established that they suffered any loss related to the drop in the purchase price from \$400,000 to \$385,000 because of the tenant's failure to pay rent or vacate the rental unit. For this reason, I dismiss this aspect of the landlord's claim without leave to reapply.

Claim for Legal Fees

As I explained to the parties during the hearing, claims for legal fees are generally not awarded, as such fees are discretionary on the part of the party claiming for them. That is to say, they are not considered a loss or damages resulting from another's party's breach of the legislation or a tenancy agreement.

In this case, while the tenant certainly breached the Act, I am not persuaded that but for the tenant's breach the landlord would not have incurred in excess of \$10,000 in legal fees.

While I refrain from opining on whether such legal fees were necessary in the circumstances, the entire cost of removing an unpaying tenant generally comprises (1) the \$100.00 application filing fee, (2) the fees for applying for a writ of possession in Supreme Court, and (2) bailiff fees. Legal fees, however, are over and above what I consider to be a reasonable amount expended to deal with a stuck tenant; such fees are borne wholly by a party wishing to incur them, and not by one party's breach of the Act.

That having been said, had the landlord been able to obtain a writ of possession in Supreme Court, and had the landlord obtained bailiff eviction services, those costs would have been recoverable under either the Act or the *Small Claims Act*.

Based on the above, I do not find that the tenant's breach of the Act results in a claim for legal costs. That aspect of the application is dismissed without leave to reapply.

Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful with part of their application, I grant their claim for reimbursement of the filing fee in the amount of \$100.00.

Conclusion

The landlord's application is granted, in part. The remainder is dismissed without leave to reapply.

I grant the landlord a monetary order in the amount of \$3,800.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 5, 2020

Residential Tenancy Branch