



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE, DRI, RP, RR, OLC

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order regarding a disputed rent increase pursuant to section 43;

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. 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.

The tenants did not serve the landlord their documentary evidence as they felt that the landlord is aware of their issues as they have had other hearings. Residential Tenancy Branch Rules of Procedure addresses this issue as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing **must be received by the respondent** and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing**. As the tenants did not submit any documentary evidence to the landlord, it will not be considered in making this decision,

however their testimony was considered. The tenants were advised of this finding and agreed and understood with it. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Are the tenants entitled to a monetary order as compensation for damage or loss?

Are the tenants entitled to an order suspending or placing conditions on the landlord's ability to enter the unit?

Are the tenants entitled to a rent reduction?

Are the tenants entitled to an order to compel the landlord to conduct repairs to the suite or unit?

Are the tenants entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Is a determination of a disputed rent increase required?

Background and Evidence

MF spoke on behalf of the tenants and gave the following testimony. The tenant testified that he moved into the unit on April 1, 2016. The current monthly rent of \$1550.00 is due on the first of each month. The tenant testified that the unit requires numerous repairs including; two toilets, a slow leak in the baseboard, hallway tiles, the stove, dishwasher, closet doors and front door handle. The tenant testified that some of these items have been in this condition since move in. The tenant testified that he advised the landlord 3-5 times of these issues since December 2019. The tenant testified that the landlord is aggressive and has been harassing them with notices to end tenancy since December and seek her access to the unit stopped; even though she has not entered the unit without authorization.

The tenant testified that they were given a fifty-dollar rent increase in December 2018 that took effect on April 1, 2019 that was above the allowable amount as per the regulations. The tenant seeks a rent reduction in the overpayment of funds since April 1, 2019. The tenant also seeks a monetary order for loss of quiet enjoyment in the amount of \$4900.00. The tenant testified that nine months after moving in a major construction project began to upgrade the roof of the four buildings on this property and that he heard construction noise every day from July 1, 2017 – March 2019. The tenant further requests that the landlord abide by all the rules and regulations under the Residential Tenancy Act.

The landlord gave the following testimony. The landlord testified that the tenant did not advise her of any repairs until she served him a notice to end tenancy and after they had an inspection of the unit on December 4 or 5, 2019. The landlord testified that as a result of a heated exchange during that suite inspection, the tenants have refused her access to conduct repairs. The landlord testified that since she started issuing the notices to end tenancy, the tenants have come up with various repairs and issues that are non-existent.

The landlord testified that the tenants agreed to the rent increase and that she only became aware of their issue as part of this application. The landlord testified that the work done on the actual building that the tenants live in was done over only a four-month period and not the amount alleged by the tenant. The landlord testified that the relationship has become extremely negative since issuing the notices to end tenancy and feels that this application is a means to strike back for the notices.

Analysis

The relationship between the parties is an acrimonious one. Both parties alleged that the other was lying, a fraud, and created fraudulent paperwork. It was explained in great detail to both parties that the applicant bears the burden of providing sufficient evidence to support their claim and that it must satisfy me on a balance of probabilities. As noted earlier in this decision, the tenant did not serve any documentation to the landlord to support his claims and therefore has not been considered.

I address the tenants claims and my findings as follows.

Repairs -

The tenant has not provided sufficient evidence to be granted a repair order. The landlord advised that she has a plumber coming to fix the toilet in three days. In addition, the tenant has not provided sufficient evidence to show what steps he took to mitigate and advise the landlord of the alleged repairs, accordingly; I dismiss this portion of the tenants claim.

Suspend Landlord Access to the Unit-

In the tenant's own testimony, he stated that the landlord had never entered the unit without notice. I find that the tenant has not provided sufficient evidence for this portion of his claim, accordingly; I dismiss this portion of their application.

Rent Reduction and Dispute Rent Increase-

The tenants request a rent reduction to recover what they allege are overpayments as a result of an excessive rent increase. The tenants have failed to provide sufficient evidence that they had disputed the rent increase. The landlord testified that this issue only came up one year after the rent increase had gone into effect. Based on the insufficient evidence before me, I dismiss this portion of the tenant's application.

Monetary Order - \$4900.00

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.

When asked how the tenant came to this calculation, he advised that he wasn't sure how much he should ask for. The tenant stated that "I didn't even know this was a thing that I could ask for". The tenant failed to provide sufficient evidence that he attempted to mitigate the loss and what the amount of actual loss was. As he has not satisfied the four factors noted above, I hereby dismiss this portion of the tenant's application.

Order for the Landlord to Comply –

The tenants have not provided sufficient evidence to satisfy me that an order to compel the landlord to comply with a specific section of the *Act*, regulation or tenancy agreement is necessary, accordingly; I dismiss this portion of the application.

The tenants have not been successful in their application.

Conclusion

The tenant's 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: May 15, 2020

Residential Tenancy Branch