



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1067063 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, PSF, RR, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 26, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- an order that the Landlord comply with the Act;
- an order to restrict or suspend the Landlord's right to enter;
- an order for a rent reduction;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agent, W.T., attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, both parties confirmed that the tenancy has ended. As such, I find that the Tenant's Application for an order that the Landlord provide services or facilities required by tenancy agreement or law, an order that the Landlord comply with the Act, an order to restrict or suspend the Landlord's right to enter, and an order for a rent reduction are now moot claims. As such, I dismiss these claims without leave to

reapply. The hearing continued based on the Tenant's Application for monetary compensation and for the return of the filing fee.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on June 1, 2019. Rent in the amount of \$3,900.00 was due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$1,820.00 was paid to the Landlord. The parties stated that they had a previous Dispute Resolution hearing in which the Landlord was permitted to retain the Tenant's security deposit. The Tenant stated that the tenancy ended on May 30, 2020 while the Landlord's Agent stated that the tenancy ended on June 5, 2020.

The Tenant stated that he is seeking that the Landlord provide him a copy of the two tenancy agreements that were signed between the parties throughout the tenancy. The Landlord's Agent stated that a copy of the agreements were provided to the Tenant as part of the Landlord's documentary evidence which the Tenant confirmed receipt of. The Tenant stated that the tenancy agreements he received were fraudulent. The Landlord denied having altered the agreements.

The Tenant is also claiming monetary compensation in the amount of \$1,000.00 in relation to the poor quality of living he suffered during the tenancy. The Tenant stated that the rent included a dishwasher. The Tenant stated that he did not have use of a functioning dishwasher throughout the tenancy. The Landlord's Agent stated that there

was a dishwasher in the rental unit and that she was unaware that the dishwasher was not working.

The Tenant stated that during the tenancy, a sewage pipe burst causing a leak in the basement of the rental unit. The Tenant provided photographic evidence in support. The Tenant stated that the he was left without water for 2 to 3 days while the Landlord was having the drains fixed. The Landlord responded by stating that they contacted a plumber immediately and that it took two days for a plumber to be available to repair the plumbing issue. The Landlord confirmed that the water was turned off briefly so that the leak would not cause further damage to the rental unit.

Lastly, the Tenant stated that the gas furnace was not functioning during the tenancy and that the Tenant was required to use electric heaters to heat the rental unit, which caused an increase to the Tenant's utility costs. The Tenant provided a comparison to the utility costs in support. The Landlord responded by stating that the gas furnace was not broken and that the Tenant chose to use electric heaters instead of making use of the gas furnace.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenant has requested that the Landlord provide him with a copy of the tenancy agreements which were signed between the parties during the tenancy. The Landlord's Agent stated that the agreements were provided to the Tenant as part of the Landlord's evidence. While the Tenant states that the agreements were fraudulent, I find that the Tenant provided insufficient evidence to demonstrate that the copy of the tenancy agreements provided to him by the Landlord had been altered in any way. As such, I dismiss this portion of the Tenant's Application.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the

Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is claiming monetary compensation in the amount of \$1,000.00. The Tenant stated that he did not have a functioning dishwasher throughout the tenancy which was included in the rent. In this case, I find that the Tenant has provided insufficient evidence to demonstrate that he notified the Landlord that the dishwasher was not functioning. As such, I find that the Landlord did not breach the *Act* as they were not made aware that the dishwasher was broken to have it repaired.

The parties agreed that there was a sewage leak in the rental unit, which required the Landlord to turn off the water while they were waiting for a plumber to attend the rental unit to repair the plumbing issue. I accept that the Landlord had to wait 2 or 3 days for the repair to be completed. In this case, I accept that the Landlord took action after receiving notification from the Tenant about the leak. Furthermore, I find that it is reasonable to expect that the water be turned off for a period of time until repairs can be made, in order to mitigate any further damage to the rental unit.

Lastly, the Tenant is claiming compensation in relation to the fact that the gas furnace was broken during the tenancy, which required him to use electric heaters, increasing his utility bill. In this case I find that the Tenant provided insufficient evidence to demonstrate that he notified the Landlord that the furnace was not functioning. As such, I find that the Landlord did not breach the *Act* as they were not made aware that the furnace was broken to have it repaired.

In light of the above, I dismiss the Tenant's claim in its entirety as the Tenant provided insufficient evidence to demonstrate that the Landlord breached the Act. Seeing as the Tenant was not successful in their Application, the Tenant is not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenant's Application 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: June 22, 2020

Residential Tenancy Branch