



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT, OPL, FFT

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“Act”)

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This tenant applied for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for its application from the landlord, 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 landlord was represented by their daughter. 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(s) to be Decided

Is the landlord entitled to an order of possession?

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

Is either party entitled to the recovery of the filing fee for their application?

Background and Evidence

The tenant gave the following testimony. The tenant testified that her tenancy began on July 1, 2019. The monthly rent of \$2850.00 is due on the first of each month. The tenant testified that she will be moving out by the end of September 2020 and that she has never given any reason to the landlord to think otherwise. The tenant testified that the landlord has been aggressive and threatening in their demeanour and behaviour towards her since the ban on evictions has been lifted by the Branch. The tenant testified that the landlord installed a mailbox in front of her mail slot on July 22, 2020. The tenant testified that she felt that this clearly shows the landlord thought she was stealing their mail, so she had to rent a mailbox at the post office the following day and have mail forwarded there. The tenant testified that she is seeking the cost of renting the mailbox of \$286.65 plus the \$100.00 filing fee for this application for a total award of \$386.65.

The landlord's agent gave the following testimony. The agent testified that the tenant has been the aggressor and that her parents are under extreme stress as a result of the tenant's behaviour. The agent testified that the landlord had never stolen the tenants mail and that there was no reason for the tenants to rent a post office box. The agent testified that the tenant should not be granted the cost of rental as her claim lacks proof of any theft of mail.

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 tenant's claim and my findings around each are set out below.

The relationship between the parties is an acrimonious one. Each party accused the other of lying during the hearing. I had to caution both parties about their behavior and yelling at each other during the hearing. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlords agent to be a more credible witness than the tenant. The agent provided consistent, logical testimony which was supported with documentary evidence where available. The agent admitted when she could not recall

specific facts and, where appropriate, referred to her notes and documents prepared prior to this hearing to assist her recollection.

The tenant was argumentative, focused on irrelevant matters and conducted herself in an agitated and irrational manner. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and the agent and making herself appear to be the wronged party. When given the opportunity to cross-examine the landlord the tenant chose to ask irrelevant personal or hypothetical questions rather than any substantive ones. Towards the conclusion of the hearing the tenant continually interrupted the agent's testimony, shouting disagreement with her evidence. Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's agent version to be more credible and consistent with how a reasonable person would behave.

It is also worth noting that the tenant was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The tenant presented her evidence in a very disjointed and vague fashion. In addition, the tenant would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The tenant first requested a monetary amount over \$9700.00 then reduced it to \$286.65 plus the filing fee. The tenants' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her 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.

The tenant was especially upset with me when she attempted to have a monetary claim of over \$9700.00 addressed in this hearing; although it had not been applied for and was not clearly outlined in her application or evidence. I advised the tenant that her application did not reflect this claim but was at liberty to file a separate application if she wanted to. Each time I attempted to explain the Residential Tenancy Branch Rules of Procedure and my limitation of being able to address what has been applied for, the tenant got even more upset. The landlord interjected and advised that they were content on addressing the issue of the mailbox. After further discussion, the tenant reduced her monetary request and asked that the mailbox issue and her filing fee be addressed today, which I did.

Furthermore, the tenant continually stated, "I'm not being given an opportunity to explain my case" and "I keep getting shut down and not given a chance to explain". The tenant made that statement despite that during the 50-minute hearing, the tenant spoke for almost 40 minutes of it. This was addressed with the tenant at the end of the hearing and I asked her if she had been given a full opportunity to present her claim and that if she had anything further information that she wished for me to consider. The tenant confirmed that she was given a full opportunity and that she was satisfied that she had presented her case fully and was given a full opportunity to make arguments and submissions.

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.

Mailbox fee - \$286.65

The tenant is seeking \$286.65 for having to rent a mailbox at the local post office as she was concerned that the landlord was going to steal her mail. In the tenant's own testimony, she stated that none of her mail had been stolen. As noted above, the party making a claim must satisfy **all four factors** to be granted a monetary award. I find that the tenant has not provided sufficient evidence of damage or loss or that the landlord

was in violation of the tenancy agreement or contravention of the Act, accordingly; I dismiss this portion of the tenant's application.

As the tenant has not been successful in their application, they are not entitled to the recovery of the filing fee and I therefore dismiss that portion of their application. The tenant's application is dismissed in its entirety without leave to reapply.

End of Tenancy

At the outset of the hearing the tenant advised that she will be moving out on or before September 30, 2020 and has never disputed or advised that she wouldn't. The tenant testified that she is amenable to the landlord being granted an order of possession for that date. Based on the agreement of both parties, the landlord is granted an order of possession pursuant to section 55 of the *Act* for 1:00 p.m. on September 30, 2020.

As there was not a need for dispute resolution for this issue and due to the lack of any disputing evidence from the tenant, I find that the landlord is not entitled to the recovery of the filing fee and that portion of their application is dismissed.

Conclusion

The landlord is granted an order of possession for 1:00 pm September 30, 2020. The tenancy is terminated. 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: September 11, 2020

Residential Tenancy Branch