



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, FFT, OLC, MNRT**

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- a monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the tenant testified that they have vacated the rental unit and the tenancy has ended. The tenant withdrew the portion of their application seeking to cancel the 10 Day Notice.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

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 claim and my findings around each are set out below.

This fixed-term tenancy began in May, 2020. The monthly rent was \$700.00 payable on the first of each month. A security deposit of \$350.00 was collected at the start of the tenancy and is still held by the landlord. The tenant testified that they have vacated the rental unit and the tenancy has ended. The parties agreed that an Order of Possession in the landlord's favour dated November 15, 2020 should be issued.

The tenant submits that there was an agreement in place with the landlord wherein they were permitted to make any repairs to the rental unit and the landlord would compensate them for all costs. The tenant submits that they incurred costs of \$2,725.20 for various repairs, labour and materials. The tenant seeks a monetary award in that amount.

The landlord submits that there was no agreement that the tenant was able to make whatever repairs or work they chose and that they would be fully reimbursed by the landlord. The landlord submits that there was an agreement that the tenant could get pre-approval for parts or tools they required for working on the rental unit. The landlord submits that the invoices totaling \$247.20 were submitted and approved by the property manager. The landlord submits that they did not approve of the additional invoice for \$2,478.00.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Both parties agreed at the hearing that this tenancy has ended and the landlord is entitled to an Order of Possession effective November 15, 2020. Accordingly, I issue an Order of Possession in the landlord's favour.

The parties disagreed on the remaining portion of the tenant's claim.

The onus to prove their claim on a balance of probabilities lies with the applicant pursuant to Residential Tenancy Rule of Procedure 6.6.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I do not find the tenant's position to be supported in the evidence or be particularly credible. Their position that they were given free reign to incur any costs related to work on the rental unit with the expectation that the landlord would compensate them to have little air of reality. If such an agreement existed it would be reasonable to expect that it would be recorded somewhere in documentary materials or referenced in written correspondence. Such a clause is not found anywhere in the signed tenancy agreement or other materials submitted into evidence.

I find the landlord's position that they would pre-approve of any intended expenditure to be far more rational, reasonable and in line with what an agreement between prudent individuals. I accept the landlord's submission that they agree with the portion of the tenant's claim seeking \$247.20 and issue a monetary award in that amount accordingly.

I find that the tenant has not established the balance of their claim on a balance of probabilities and accordingly dismiss without leave to reapply.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$247.20 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced to \$102.80.

Conclusion

I grant an Order of Possession to the landlord effective 1:00 PM on November 15, 2020. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$247.20 from \$350.00 to \$102.80.

The balance of the tenant's application is dismissed 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: November 9, 2020

Residential Tenancy Branch