



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Forest Grove
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL MNDCT RR FFL

Introduction

The tenant applied for compensation and for a reduction in rent pursuant to sections 65 and 67 of the *Residential Tenancy Act* (“Act”). The landlords applied for compensation pursuant to section 67 of the Act. The parties’ applications were “crossed” and heard together at an arbitration hearing before me on February 11, 2021.

Both parties, along with an articling student (advocate) representing the tenant, attended the hearing. The landlords comprise some sort of corporate entity and an individual, which I collectively refer to as “landlord” in this decision. All parties were affirmed, except for the advocate.

Preliminary Issues: Service

The tenant appeared surprised when I explained that this hearing was convened to address both her and the landlords’ applications. She remarked that she had not received any Notice of Dispute Resolution Proceeding from the landlord. The landlord testified that he had served a copy of his Notice of Dispute Resolution Proceeding on the tenant by way of Canada Post registered mail. He was unable to provide me with the registered mail tracking number. Nor, I note, had he submitted or uploaded any documentary evidence in support of his application in which he sought \$9,800.00.

Rule 3.5 of the *Rules of Procedure* states that an “applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.”

Taking into account the tenant’s denial of ever having received the landlord’s Notice of Dispute Resolution Proceeding package, and considering that the landlord was unable

to provide any information such as a tracking number, I am not satisfied that the landlord served a copy of the Notice of Dispute Resolution Proceeding in respect of his application on the tenant. As explained to the parties during the hearing, I would therefore be unable to proceed with hearing his application or claim. The landlords' application is dismissed with leave to reapply.

The tenant and her advocate testified and submitted that they served copies of the tenant's evidence on the landlords by way of registered mail. The landlord denied, or could not remember, that he received anything. The advocate provided a copy of the registered mail tracking number to me and I verified the status of the corresponding mail on the Canada Post tracking website. The website indicated that the package was delivered on October 30, 2020 and that it was signed for. The signatory name matches that of the landlord. Nevertheless, the landlord did not recall receiving anything.

Issues

1. Is the tenant entitled to compensation as claimed?
2. Is the tenant entitled to a reduction in rent as claimed?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on May 15, 2019 and ended on January 15, 2021. Monthly rent was \$600, the security deposit was \$300, and there was a pet damage deposit of \$100. A copy of the written tenancy agreement was submitted into evidence.

The tenant, with additional submissions by her advocate, testified that the landlord was ordered (in August 2020) by an arbitrator of the Residential Tenancy Branch to return a dog pen or kennel that had allegedly been taken from her. She testified that he had not complied with that order and seeks compensation for that non-compliance. A copy of that Decision was submitted into evidence.

The tenant further testified that as a result of the kennel or pen not being returned, she was required to pay for "puppy pads." Finally, she testified that the landlord owed her \$200 for a hydro bill that she paid for.

The landlord stated that the tenant and possibly her advocate perjured themselves and that he never had possession of the tenant's dog kennel. "She perjured herself so much she should be in jail!" he added. He testified that he in fact gave the dog kennel back to the tenant and that she put it into her storage. "I don't owe her a kennel," or any compensation related to that kennel, the landlord argued.

In respect of the puppy pads, the landlord was perplexed as to why he ought to be responsible for the cost of the tenant's puppy pads. He then went on to explain several unrelated issues about the tenant and added that "all these things she's asking for are fabrications." The landlord then added that he intends to pursue a civil claim against the tenant for a significant amount of damages related to damages in the rental unit. In summary, he stressed that "I don't owe her a dime," this entire dispute "it's crazy, crazy, crazy," and that the tenant is "an evil, deceitful, rotten person."

There was a brief attempt by the tenant to respond to the landlord's testimony, however, given the volatile nature of the parties I explained that the hearing would conclude.

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.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

The tenant claims that she is entitled to compensation for matters related to the landlord's failure to return a dog kennel, for the cost of puppy pads, for the cost of a hydro bill, and for the loss of quiet enjoyment. The landlord vehemently denies all aspects of the tenant's claim.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above* their testimony to establish their claim. In this case, I find that the tenant has failed to provide any documentary evidence for me to find that the landlord breached any section of the Act, the regulations, the tenancy

agreement, or the previous Decision, that might give rise to compensation. There are no copies of any hydro bill, no copies of any correspondence between the parties regarding any of the issues to which the tenant raised, no photographs or video, and no witnesses to lend weight, or attest, to any of the particulars of the tenant's claim. (It should be noted that, as the tenancy is over, I make no findings in respect of a reduction in rent.)

Taking into consideration all the oral testimony and minimal amount of documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that the landlord breached the Act, the regulation, the tenancy agreement, or the arbitrator's decision. As such, I conclude that no compensation may flow from a breach that has not been proven.

Conclusion

The tenant's application is hereby dismissed, without leave to reapply.

The landlords' application is hereby dismissed, with leave to reapply.

This decision is final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 11, 2021

Residential Tenancy Branch