



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPRM-DR, OPR-DR, FFL

For the Tenant: CNR, OLC, MNDCT, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed a claim for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated November 7, 2020 ("10 Day Notice");
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- a monetary order for damage or compensation under the Act of \$2,400.00; and
- recovery of the \$100.00 Application filing fee.

The Landlord filed a claim for:

- an order of possession for unpaid rent, based on having served the 10 Day Notice;
- a monetary order of \$850.00 for outstanding unpaid rent from the Tenant; and
- recovery of the \$100.00 Application filing fee.

The Tenant, a support worker for the Tenant, J.P., and the Landlord, appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

I considered service of the Applications, Notices of Hearing and documentary evidence by the Parties on the other Party. The Tenant said she served the Landlord her documents on November 17, 2020 via registered mail, and another package of evidence on January 14, 2021 by registered mail. The Tenant said that everything she uploaded to the RTB was served on the Landlord. The Landlord said he had received the Application and/or the documentary evidence from the Tenant and had reviewed it prior to the hearing.

The Landlord said he served his documents on the Tenant via registered mail on November 21, 2020; however, he said that this package came back because it had been refused by the Tenant. The Tenant said she did not receive anything from the Landlord, even though he had her forwarding address. The Landlord uploaded a copy of the registered mail receipt in his submissions. I checked the tracking information with Canada Post, and it said that the package had been refused by the Tenant.

According to Residential Tenancy Branch Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlord served his Application, Notice of Hearing, and evidentiary submission on the Tenant pursuant to the Act.

However, the Landlord said he also submitted a police report and subpoena he had just received; however, he said he had not served the Tenant with these documents. As a result, and for administrative fairness, I will not consider these documents, which were not served on the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

The Tenant said that she moved out of the rental unit on November 30, 2020; therefore, she withdrew her application to cancel the 10 Day Notice and for an Order for the Landlord to Comply with the Act or tenancy agreement. In addition, the Landlord no longer needed an order of possession for the rental unit. Accordingly, we reviewed the Parties' respective monetary claims in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the rental unit is a basement suite in a duplex, and that there are other tenants in upper suite. The Parties agreed that the fixed-term tenancy began on February 15, 2020, and was to run to February 15, 2021. The Parties agreed that the Tenant paid the Landlord a monthly rent of \$850.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$450.00, and no pet damage deposit.

The Parties agreed that the Landlord did not conduct an inspection of the condition of the rental unit before or at the start of the tenancy or at the end of the tenancy.

In the hearing, the Parties agreed that the Tenant vacated the rental unit on November 30, 2020. The Parties disagreed as to whether or when the Tenant provided the Landlord with her forwarding. The Tenant said she gave it to the Landlord when he attended the rental unit in mid-November for a plumbing matter. However, the Landlord said that the Tenant became "...aggressive and violent and I couldn't do the plumbing." He said he decided to return when the Tenant was less agitated. The Tenant denied the Landlord's allegations in this regard.

TENANT'S CLAIM

In her Application, the Tenant requested compensation of \$2,400.00, which she explained in the Application as follows: "Because of recent assault by a tenant on the property I am unable to accept any one of three offered positions this month (November)."

However, the Tenant also submitted a monetary order worksheet, as follows:

	Receipt/Estimate From	For	Amount
1	Key Cutting	Cutting key for Landlord for shed door	\$6.25

2	Loss of quiet enjoyment	Assaulted, destruction of property, no peace. And \$1,000 for each month I had to endure living there.	\$9,000.00
3	Labour/Materials Time	Destroying fence 3x	\$600.00
4	Labour/Materials Time	Raking up an acre of dog shit	\$500.00
5	Lost wages for 4 weeks	Pay is \$25.33/hr, 30 hrs/week	\$3,039.60
6	Set -standard wrenches	Total \$175.00 2 yrs ago	\$87.50
7	security deposit	Return of security deposit - \$25.00	\$400.00
		Total monetary order claim	\$13,633.35

The Tenant did not submit an amendment to her Application with this modification of the claim, and pursuant to Rule 4 – Amending an Application for Dispute Resolution.

Rule 4 – Amending an Application for Dispute Resolution

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

...

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

...

4.3 Time limits for amending an application

Amended applications and supporting evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office as soon as possible and in any event early enough to allow the applicant to comply with Rule 4.6.

...

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing. See also Rule 3 [Serving the application and submitting and exchanging evidence].

[emphasis added]

Further, Rule 3.5 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.

I find that the Tenant did not submit the monetary order worksheet as an Amendment to her Application, pursuant to the Rules; and therefore, I find that the Tenant's amended claim for compensation is not properly before me. Further, I find that it would be administratively unfair to the Landlord for me to consider this evidence, since he did not have sufficient notice of the amendment to be able to properly respond to it. The Landlord received the monetary order worksheet in evidence; however, it was internally inconsistent with the Tenant's Application, and therefore, was a source of confusion for those reviewing the evidence, including the Landlord.

In addition, the Landlord advised me of the Tenant's prior application for compensation, much of which she has repeated in the amended monetary order worksheet. However, the arbitrator in that proceeding dismissed the Tenant's claims without leave to reapply. The legal doctrine of *res judicata* is the principle that a claim may not be relitigated once it has been judged on the merits.

Accordingly, I dismiss the Tenant's claim for \$13,633.35 without leave to reapply. I have considered only the Tenant's original claim for compensation of \$2,400.00 for an assault she said she suffered at the hands of another occupant of the residential property.

The Tenant provided considerable testimony about the neighbouring tenants who lived in the suite above her rental unit. She gave details about not getting along with the other tenants and of their abusive behaviour in smoking by her door, ruining a fence she built, not cleaning up their dogs' feces in the yard, a common area in which the Tenant said she loves to garden. The Parties agreed that the Tenant built a fence to protect a portion of the yard from the dogs' feces. However, the Landlord said that this prevented anyone else from using the yard at all. As a result, the other tenants tore the fence down on more than one occasion (the Tenant rebuilt it).

The Tenant said the abuse culminated in being punched in the face by the son of the tenants who live upstairs. She said:

These are violent, drug-addicted people. Their son punched me in the face and his parents said and did nothing. I do not want anyone to go through what I have gone through.

The Tenant submitted photographs illustrating the facial injuries she said she suffered when she was punched by the other tenants' son.

The Tenant said that the Landlord did nothing to protect her from these people and to protect her right to quiet enjoyment of the rental unit. The Tenant suggested that the Landlord should have evicted the other tenants based on this assault.

The Landlord said

[The Tenant] has mental issues. She is very unstable, violent, and aggressive. She will not let the others – she put the lock up so that nobody can enter into the yard. The police came many times. She gets aggressive with the police and she

has been to jail.

Another neighbour on the side said she is very violent and sends them long emails and text messages in the middle of the night and she's harassing them.

I tried to solve all of [the Tenant's] problems. I have no power like a police or bylaw officer or a security guard. She provokes and starts the fight and gets violent and aggressive.

The Tenant said:

The mental issues, yes, I have chronic PTSD, that's absolutely true, and I get triggered when I get abused. In what way am I violent?

The Landlord said:

She starts yelling and she wants to punch other people, whoever Why put a lock on the gate? It is a shared back yard; she is deliberately locking it, so the other tenant will not get in. It is a shared back yard. For the whole nine months she didn't let the upstairs tenant use the back yard.

However, when asked, the Landlord said that he had never seen the Tenant strike anyone. He said:

No haven't seen it. I've seen evidence of violence; she got so mad at us and started yelling, but she was very rude aggressive, violent. I'm a very quiet guy, I'm not going to hit back. I let her talk and whatever. I thought - I will fix the plumbing next time when she's in a better mood.

The Landlord submitted a letter her received from one of the Tenant's neighbours (not from upstairs). In this letter, "L.S." stated:

I was out side having a smoke when I heard [the Tenant] yelling at [K.K., the upper tenants' son]. Then she proceeded to push him in the chest until she pushed him and dogs out of the back yard.

August 19th 2020

[L.S.]

[signature]

The Tenant did not tie her compensation claim to any specific costs or expenses she incurred.

LANDLORD'S CLAIMS

The Landlord said

Most of these issues I have resolved at the last hearing on September 3. She brought it again the same issue over the fence – resolved in last hearing - and the shed, everything. I'm so glad she's not living there anymore and she's happy where she lives.

Most of these issues were resolved at the last hearing.

There was \$850.00, which she didn't pay me for November [2020] and gave me the key on December 2. Gave me no notice – never gave me a proper notice. In her email she was saying 'I will move out as soon as I find a new place,' but she told me when she moved out. She never cleaned up as she left, as she already told you.

The Landlord said he seeks compensation of \$850.00, and he said he still hold the \$450.00 security deposit.

The Tenant said that she was unable to work in November 2020, because of the assault. The Landlord said: "She did not have a job in the first place. She wants \$3,000.00 for this, but she didn't have a job. She had three interviews, and that's all I want to say."

The Tenant said:

I did have three job interviews and I had three offers. I could write my own ticket. I could have gone to any of those places and worked. I am out of wages for that month and I had to recover. I tried to get along with those people. I asked [the Landlord] how he was going to protect me, as he is supposed to do.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

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.

Before the Parties testified, I let them know how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 (“PG #16”) sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party as applicant must prove:

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

(“Test”)

PG #16 states: “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

TENANT’S CLAIM

Section 28 of the Act sets out a tenant’s right to quiet enjoyment of the rental unit, and states that tenants are entitled to “reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord’s right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference.”

Policy Guideline #6 states:

A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The Tenant seeks compensation, because the Landlord did not do anything after the Tenant was assaulted by the other tenants' son. However, there is evidence before me that the Tenant may have played a role in this situation. The Landlord has said the Tenant yells at people, and emails and texts neighbours in the middle of the night. Also, as stated in the letter by "L.S.", the Tenant yelled at and pushed the person who ultimately punched her. This is not to say that there the Tenant is to blame for being assaulted or that the assault should be excused; however, based on the evidence before me overall, I find that the living arrangement and relationship of the Parties at the residential property was complicated and multifaceted. I find that the Tenant has not provided sufficient evidence to establish a means by which the Landlord could have addressed this situation under the Act. I find that evicting a party in a situation like this is more complicated than simply issuing an eviction notice.

I find that a person's avenue for redress after an assault is to the police, who would investigate the incident and the situation. I find this is not the responsibility of a landlord under the Act. I find in this set of circumstances, the Tenant has not provided sufficient evidence to establish how the Landlord could have assisted the Tenant, where the police could not. To simply argue that the Landlord should have evicted the other tenants does not take into consideration the acrimonious relationship the occupants of the residential property had with each other. I find the nexus between the compensation claimed and the Landlord's actions to be outside the scope of the Act, as described by Policy Guideline #16 above.

I find from the evidence before me that the Tenant has not shown how the Landlord breached the Act, Regulation, or tenancy agreement in this situation. As such, I find she has failed to prove the first two steps of the Test. Also, I find that the Tenant did not establish a basis for claiming the amount that she seeks, which is a failure of the third step in the Test. As such, **I dismiss the Tenant's claim without leave to reapply**, pursuant to section 62 of the Act.

LANDLORD'S CLAIM

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord in November 2020. I appreciate that the Tenant was injured from the assault that month; however, this does not offer her relief from paying rent that is due to the Landlord.

Based on the evidence before me, overall, I find that the Landlord is eligible for compensation from the Tenant, given her failure to pay rent in November 2020.

Pursuant to sections 26 and 67 of the Act, I award the Landlord with **\$850.00** from the Tenant in recovery of the unpaid rent. I also award the Landlord with recovery of his **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$450.00 in partial satisfaction of the Landlord's monetary claim. I authorize the Landlord to retain the Tenant's \$450.00 security deposit, and I grant the Landlord a Monetary Order from the Tenant for the remainder of the award owing in the amount of **\$500.00**.

Conclusion

The Tenant is unsuccessful in her Application for monetary compensation from the Landlord, as the Tenant failed to provide sufficient evidence to support her claim. The Tenant's other claims related to the tenancy are dismissed without leave to reapply, because the Tenant has already moved out of the rental unit and is no longer a tenant there.

The Landlord is successful in his claim for a monetary award of \$850.00 from the Tenant, as he provided sufficient, undisputed evidence that the Tenant failed to pay rent in November 2020. The Landlord is also awarded recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$500.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 03, 2021

Residential Tenancy Branch