



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 3, 2020 wherein the Tenant sought monetary compensation from the Landlords in the amount of \$5,000.00.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on February 19, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to monetary compensation from the Landlords?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed this tenancy began April 1, 2009. The parties entered into a new tenancy

agreement every year. Monthly rent at the end of the tenancy was \$969.00 and the Tenant paid a \$437.50 security deposit and a \$437.50 pet damage deposit.

The Tenant stated that when she moved into the rental unit, she told the Landlords that she had a home-based business. She stated that she is a hairdresser and closed her salon in 2009 due to the recession and moved her business into her home. The Tenant stated that she paid business insurance for 10 years and the address was listed as the rental property.

The Tenant testified that in October of 2020 the Landlords informed the Tenant that they were not going to extend her lease as of April 2021 and wanted her to move out as of August 31, 2021. The Landlords gave her four months to move out from the end of her lease as well as a months free rent.

The Tenant sought monetary compensation in the amount of \$5,000.00 for losses she says she incurred due to a lack of hot water at the rental unit. She stated that on October 10, 2020, she had a client in her chair and the hot water was not working. She went down to the basement and used the key code and the key code did not work. She informed the Landlord that she could not get into the basement and they informed her that she was no longer to have access to the basement, where the electrical panel and hot water was located.

The Tenant claimed that she did not have hot water during the entire last month of her tenancy. She stated that it stopped working on October 10, 2020 and was not fixed until October 31, 2020. The Tenant claimed that she had to cancel all her appointments for the last three weeks of October and moved out October 31, 2020.

The Tenant filed a Monetary Orders Worksheet in which she detailed her claim. She sought compensation for the amount she would have received for appointments in the three weeks in October she claims to have had no hot water. As well, she sought her moving and fuel costs as well as lost income while she was "rebuilding her salon". In total the Tenant requested the sum of \$4,981.00 from the Landlord.

In response to the Tenant's claim the Landlord, A.R., testified as follows. A.R. stated that they when the Tenant first moved in, they believed that she worked in the service industry. She stated that they became aware the Tenant was operating a hair salon approximately eight and a half years ago. She confirmed that they believed this was a side job and not her primary source of income.

A.R. stated that the hot water tank did not stop working on October 10, 2020. She stated that they replaced the hot water tank on October 30, 2020, not because it stopped working, but because it was elderly, and they didn't want to take the chance.

A.R. stated that they got an email from the Tenant on October 23, 2020 wherein the Tenant stated that the hot water tank "quit". She stated that this was the first time she became aware of the Tenant's allegation that the hot water tank wasn't working.

A.R. also stated that they were in the basement suite at the rental property from October 7-16, 18, 24 and 29-31. She noted that at all times they had access to hot water. A.R. confirmed there is one electrical panel. She stated that the Tenant pays for the electricity and the Landlords reimburse the Tenant based on the number of nights the Landlords, or their guests use the basement suite.

A.R. stated that there was no issue with the hot water tank when they were there. She stated that this was an "elderly" tank and they decided to replace it rather than wait until it malfunctioned. She confirmed that they upgraded from a 45-gallon tank to a 60-gallon tank.

A.R. stated that because they have friends who use their basement suite and tradespeople, they change the access code on occasion. She stated that she denied the Tenant access to the basement because the Tenant told her that she had replaced the hot water tank pressure valve six times. The Landlord confirmed they were very concerned about her accessing the hot water tank and performing these repairs as it was very dangerous. She confirmed that the Tenant sent this to the Landlords on October 24, 2020 by email.

A.R. stated that at no time did the Tenant tell her that she was needing to access the electrical panel and the first time the Landlords were aware of this was when the Landlords received her evidence package.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation. To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case the Tenant claims loss of income as a result of the alleged lack of hot water in the rental unit during the month of October 2020. I have reviewed the tenancy agreement provided in evidence before me. The tenancy agreement makes no mention of the Tenant using the rental unit for business purposes.

I accept the Landlord's testimony that they were initially informed by the Tenant that she worked in the service industry and cut hair as a side job. I am not persuaded that the Tenant informed the Landlords that she intended to use the rental unit for her hair salon and as her primary source of income. I find it likely the parties would have included this in the tenancy agreement had that been the case. I find that the Tenant's ability to operate a business out of the rental unit was not a term of this tenancy agreement.

I am also not persuaded that the Tenant was without hot water for three weeks during the month of October 2020. I accept the Landlord's testimony and evidence that the Tenant informed them that the hot water tank was not working on October 23, 2020. I further accept the Landlords' testimony that they were present at the rental property on October 24, 2020 and used the hot water without incident. It appears as though the parties had a disagreement with respect to the Tenant's access to the electrical panel on October 23, 2020; at most I find she may have been without hot water for less than 24 hours until the Landlords returned to the rental unit on October 24, 2020.

While the Tenant should have access to the electrical panel, I accept the Landlord's testimony that they were concerned the Tenant was performing unauthorized repairs which may have put the property at risk. The evidence confirms that upon returning to the rental unit they replaced the hot water tank as a precautionary preventative measure, not because it was inoperable.

In all the circumstances I find the Tenant has failed to prove the Landlords breached the *Act*, the *Regulations*, or the tenancy agreement.

I am also not persuaded the Tenant has proven her claim of loss of income. The evidence before me includes the amounts she claims she would have made on various dates for hair appointments. The Tenant did not provide any proof of her income, nor did she provide any details as to the costs she incurs to perform her services, and whether the amounts charged are gross profits or net. In any event, as I am not persuaded she was without hot water during the material time, I dismiss her claim for lost income.

Finally, and as noted during the hearing, I decline the Tenant's claim for moving expenses as well as the costs she claims she incurred to set up her hair salon elsewhere. A tenant is not guaranteed perpetual occupation and moving costs are inevitable. Similarly, as the Tenant operated her business out of rented premises, the cost to re-establish her business elsewhere is an unavoidable cost which is not recoverable from the Landlords.

I therefore dismiss the Tenant's claim in its entirety.

Conclusion

The Tenant's claim for monetary compensation from the Landlords 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: March 17, 2021

Residential Tenancy Branch