



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC LTD 0879993
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The tenant, the owner and the manager of the subject rental property attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with this application for dispute resolution and usb stick evidence, via registered mail on January 21, 2021. A Canada Post registered mail receipt stating same was entered into evidence. The manager testified that the landlord received the tenant's application for dispute resolution but the usb stick was blank.

The tenant testified that he attempted to call the landlord to confirm that the landlord was able to access the usb stick but the landlord refused to take his call. No documentary evidence to support the tenant's testimony was entered into evidence. The manager testified that the tenant did not attempt to get in contact with him.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure states:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence....

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

I find that the tenant has not proved that he attempted to contact the landlord before this hearing to confirm that the landlord was able to access the tenant's digital evidence. I accept the manager's testimony that he was not able to gain access to the tenant's evidence on the usb stick. Pursuant to Rule 3.10.5, I exclude the tenant's evidence from consideration because it was not received by the landlord. I note that the exclusion of the tenant's evidence has no impact on the outcome of this decision.

Both parties confirmed their email addresses for service of this decision.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that this tenancy began on November 1, 2019 and ended early July 2020. The subject rental property is a house with rooms rented to different tenants.

Both parties agree that they had a previous Residential Tenancy arbitration. The file number for the previous decision is located on the cover page of this decision. Both parties agree that in that decision, dated July 31, 2020, the tenant was awarded an order of possession. Both parties agree that after the July 31, 2020 hearing the tenant

was offered one of the rooms in the subject rental property but not the room he previously rented because someone else had already moved in. The tenant testified that he did not move in because the room he was offered was smaller, 10% more expensive and the landlord refused to allow him to move his own furniture in.

The manager testified that the rent remained the same and that all rooms came fully furnished.

The tenant testified that he contacted a bailiff to enforce the order of possession to get his room back. The tenant testified that the bailiff told him that he would have to put down a \$10,000.00 deposit before the bailiff would gain the tenant possession of the subject rental property. The tenant testified that he is seeking \$10,000.00 from the landlord so that he can hire the bailiff.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

As stated above, in order to be successful in a monetary claim, the applicant must prove that a loss has resulted from the landlord's non-compliance with the *Act*, regulation or tenancy agreement. I find that the tenant has not incurred the loss of \$10,000.00 at this time because he has not paid this amount. The loss has not been actualized. Furthermore, if the bailiff were retained, the actual cost may be lower than \$10,000.00 which is the cost of the retainer, not necessarily the final cost of the bailiff. The tenant is not entitled a monetary award that may be greater than the actual loss potentially suffered.

I find that this claim is pre-mature as no loss has yet been incurred by the tenant. The tenant's application is therefore dismissed without leave to reapply.

Conclusion

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: May 27, 2021

Residential Tenancy Branch