



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated March 3, 2021 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's lawyer, and the tenant 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 landlord confirmed that his lawyer had permission to speak on his behalf. This hearing lasted approximately 41 minutes.

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord, the landlord's lawyer and the tenant all affirmed under oath that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. The tenant confirmed that he did not require an interpreter or translator at this hearing, as he was able to properly speak and understand English. Both parties confirmed that they were ready to proceed with this hearing.

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

I notified the landlord's lawyer that I did not receive a copy of the landlord's evidence at the RTB. I informed her that the landlord did not need to submit another copy of the landlord's evidence to the RTB after the hearing was over.

The tenant was in receipt of the landlord's 1 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

Settlement of End of Tenancy Issue

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 and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 1, 2021, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that his 1 Month Notice, dated March 3, 2021, is cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing, except for his monetary claim.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties affirmed that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

Both parties were unable to settle the tenant's application for a monetary order and the filing fee asked that I make a decision about it. Below are my findings.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

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

The tenant stated that this tenancy began on October 1, 2018. Both parties signed a written tenancy agreement, a copy of which was provided for this hearing. Both parties agreed that monthly rent in the current amount of \$2,050.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord, as per the written tenancy agreement. The tenant said that he continues to reside in the rental unit.

The tenant seeks a monetary order of \$9,508.00. The landlord disputes the tenant's application.

The tenant testified regarding the following facts. He rented the unit from the landlord's father. The tenant had a verbal agreement with the landlord's father that the landlord does not know about. The tenant is allowed to store items in the carport at the rental property. The roof leaked and destroyed the tenant's items stored in the carport. The tenant has receipts and invoices for the items lost but did not provide them for this hearing. The tenant lost his cashier counter and washing machine and had to do laundry outside the rental unit. The tenant refused repairs by the landlord's repair person for the stove, due to the covid-19 pandemic and the tenant's family and children living in the rental unit. The landlord should not give the tenant used appliances such as the stove, he should only give items that are working properly.

The landlord testified regarding the following facts. The landlord has always managed the rental unit for his father. The online advertisement for the rental unit did not include use of the carport for storage. The carport is open on all four sides. The tenant stored his items in the carport and put a tarp all around it. There was no verbal agreement between the tenant and the landlord's father for the tenant to use the carport for storage. When the roof leaked, the landlord had it repaired within one month in October 2019. The landlord has completed all repairs immediately at the rental property. The tenant refused entry to the landlord's repair person five times to fix the burner on the used stove. The landlord is not required to purchase new appliances for the tenant, he can purchase used items.

Analysis of Tenant's Monetary Application

During the hearing, I notified the tenant that as the applicant, he was required to present his application.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present his evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During the hearing, the tenant failed to properly go through his specific monetary claims and the amounts for each claim. This hearing lasted 41 minutes, so the tenant had ample opportunity to present his monetary application and respond to the landlord's submissions. The tenant submitted documents but failed to go through any of them during this hearing.

Section 32 of the *Act* states the following:

Landlord and tenant obligations to repair and maintain

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$9,508.00, without leave to reapply. This includes \$6,000.00 for two cashier counters, \$1,500.00 for two chest freezers, \$400.00 for a washing machine, \$1,200.00 for three grocery scales, and \$408 for 24 "termo contenars" (as written by the tenant). All of these items and amounts were taken from the tenant's written evidence, which was not reviewed by the tenant during this hearing. I find that the tenant failed to satisfy the above four-part test. The landlord disputed the tenant's claims.

I find that the tenant did not provide sufficient evidence to substantiate his monetary claim for \$9,508.00. The tenant did not indicate how he arrived at the above monetary amount. The tenant provided a written breakdown of his monetary claim but did not review this document at all during the hearing. During the hearing, the tenant did not explain what amounts he was seeking and why and did not indicate his efforts to mitigate his losses. The tenant claimed that he had receipts and invoices to support his monetary claim, but he did not provide them with his application evidence. The tenant had ample time to submit this evidence, as he filed this application on March 11, 2021 and this hearing occurred over three months later on June 21, 2021.

I find that the landlord fulfilled his obligations under section 32 of the *Act*, to repair and maintain the rental unit, upon receiving repair complaints from the tenant. I accept the landlord's testimony that he had the roof repaired at the rental unit, within one month in October 2019. The tenant did not dispute this testimony from the landlord at the hearing. I find that the tenant failed to provide sufficient evidence that the landlord failed to take appropriate action to follow up on the tenant's repair complaints.

I also find that the tenant did not provide written evidence that he was permitted to store items in the open carport at the rental property. The landlord stated that the original online advertisement for the rental unit did not allow for use of the carport for storage. The tenant did not dispute this claim by the landlord. The written tenancy agreement that the tenant provided for this hearing does not include use of a carport as included with the rent and indicates the landlord's name as the landlord for this rental unit.

The landlord denied any verbal agreement between his father and the tenant, for the use of the carport by the tenant. The tenant did not call the landlord's father as a witness or provide a witness letter from him for this hearing, to support his claim. The tenant did not call the basement tenant as a witness or provide a witness statement from him for this hearing, despite indicating that the basement tenant would support the tenant's testimony. The tenant did not dispute the landlord's evidence indicating that the tenant and the landlord received bylaw infraction notices from the local City

authority, requiring the tenant to remove his storage items from the carport, as he was not entitled to store items there.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's 1 Month Notice, dated March 3, 2021, is cancelled and of no force or effect.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached Order of Possession effective at 1:00 p.m, on August 1, 2021, to be used by the landlord **only** if the tenant does not abide by condition #1 of the above settlement. The tenant must be served with this Order as soon as possible after they do not comply with the above agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application for a monetary order of \$9,508.00 and to recover the \$100.00 filing fee, 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: June 21, 2021

Residential Tenancy Branch