



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sandman Hotel Abbotsford Airport and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, MNDCT, AAT, PSF, LRE, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62.

Both parties attended the hearing. The landlord was represented by manager VG (the landlord) and assisted by counsel RT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant affirmed he served the notice of hearing and the evidence (the materials) on July 05, 2021 in person to the landlord's agent. The landlord confirmed receipt of the materials.

Based on the testimony offered by both parties, I find the tenant served the materials in accordance with section 89(1)(a) of the Act.

The landlord affirmed he served the response evidence by email and attached it to the tenant's rental unit front door. The landlord does not remember when he served the response evidence. Counsel RT affirmed the tenant did not provide an address for service. The tenant affirmed he did not authorize the landlord to serve documents by email and that he did not receive the response evidence.

Based on the landlord's vague testimony, I find the landlord did not serve the response evidence and I excluded these documents.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the tenant affirmed the tenancy ended on June 10, 2021. The landlord stated the tenancy ended on June 23, 2021.

The application for all the claims except the monetary compensation is moot, since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for all the claims except the monetary compensation.

Issue to be Decided

Is the tenant entitled to a monetary compensation for damage or loss?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on May 01, 2019 and ended on June 10, 2021. Rent was \$600.00 to \$800.00 per week or maybe \$2,700.00 per month. The landlord collected four of five security deposits of \$200.00 each and did not return them.

The landlord affirmed the tenancy started on May 18, 2020 and ended on June 23, 2021. Rent was \$75.00 per day plus taxes and the tenant was charged a total of \$609.00 per week. The landlord did not collect a security or pet damage deposit.

The tenant is claiming compensation for loss in the amount of \$3,000.00 because the landlord overcharged him \$3,000.00. The tenant affirmed the landlord charged \$700.00 because the rental unit was not clean, a few days later the landlord charged “another \$300.00 and something extra” for smocking in the rental unit, and an extra \$500.00. The tenant submitted into evidence three partial bank statements indicating payments to the landlord in the amount of \$609.00.

The landlord affirmed he did not charge or receive \$3,000.00 from the tenant.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that he suffered a loss due to the landlord's non-compliance with the Act. The partial bank statements submitted by the tenant do not indicate payments to the landlord of \$300.00, \$500.00 and \$700.00.

I dismiss the tenant's claim for compensation.

Conclusion

The tenant's application for a monetary order for loss 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: October 12, 2021

Residential Tenancy Branch