



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. The Tenant applied for:

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 13, 2021 (the Two Month Notice);
- an order for the Landlord to comply with the Act, Regulation, or tenancy agreement;
- a monetary order for monetary loss or other money owed; and
- authorization to recover the filing fee from the Landlord.

In addition to the issues identified by the Dispute Codes above, the Tenant's paper application indicated they wished to apply for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The Tenant, the Landlord, and the Landlord's assistant were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served the Landlords with the Notice of Dispute Resolution Proceeding (NDRP) and evidence by registered mail on an unknown date. The Landlord's assistant indicated the NDRP was received, but with incomplete evidence.

The Landlord's assistant testified they served their evidence on the Tenant by registered mail to the rental address on September 15, 2021. The Tenant indicated they did not receive the Landlords' evidence.

As those in attendance were prepared to proceed with the hearing, I find the parties sufficiently served for the purposes of the Act, in accordance with section 71.

Preliminary matter

At the beginning of the hearing, the Tenant indicated they had moved out of the rental unit on September 15, 2021, but had returned to check the mail. The Landlord and the Landlord's assistant were not aware the Tenant had vacated the unit.

During the hearing, I advised the parties that as the Tenant has moved out of the rental unit, the tenancy has ended, and the Landlords are entitled to an order of possession.

As the tenancy has ended, I dismiss the Tenant's application to cancel the Two Month Notice, and for an order for the Landlords to comply with the Act, Regulation, or tenancy agreement. The remainder of this decision will address the Tenant's application for a monetary order, and to recover the filing fee.

Issues to be Decided

- 1) Is the Tenant entitled to a monetary order for monetary loss?
- 2) Is the Tenant entitled to the filing fee?

Background and Evidence

The Tenant and Landlord agreed on the following regarding the tenancy: it started September 1, 2020 as a fixed term to September 1, 2021, then became month to month; rent is \$2000.00, due on the first of the month; and the Tenant paid a \$1000.00 security deposit the Landlords still hold.

Regarding their monetary claim for \$500.00, the Tenant testified that though they rented the unit for September 1, 2020, the Landlord wanted to replace the existing carpet with flooring. The Tenant said they would prefer to leave the carpet in for the cooler months, stating they would steam clean it, and read an email, dated August 27, 2020, to that effect. The Tenant testified the Landlord did not want to wait on the installation; the Tenant further stated they could not be in the unit "while they tore up the floor." The Tenant testified that as a result of the flooring being installed, they stayed with their child for a week, did not move into the rental unit until September 7, 2021, and, therefore, are seeking to recover \$500.00 from the Landlords.

The Landlord testified they recalled that the Tenant's relative wanted to install the flooring the Landlord had purchased. The Landlord recalled the Tenant stating they would like to get the flooring done before they moved in on September 1.

The Landlord testified that the Tenant had not raised reimbursement; the agreement was for the Tenant to pay for the work, via their relative doing the labour, as the Landlord had paid for the materials.

The Landlord testified that the Tenant requested reimbursement for the time they were not living in the unit only after the Landlord served the Tenant with a notice to end tenancy.

The Landlord further testified that they recommended to the Tenant that the new flooring be installed, but did not insist on it. The Landlord stated they considered it a good gesture to replace the carpeting with new flooring.

Analysis

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the 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. In this case, the onus is on the Tenant to prove entitlement to a claim for a monetary award.

Policy Guideline 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 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;
- ...

I accept the affirmed testimony of the Landlord that as they had already purchased the flooring, they suggested but did not insist the carpet be replaced at the beginning of the tenancy.

I accept the Tenant's affirmed testimony that they stayed at their child's home for one week while the carpet was being replaced with flooring. During the hearing, the Tenant did not indicate they incurred any costs in doing so. I also accept the affirmed testimony of the Landlord that the Tenant did not raise the question of reimbursement until served with a notice to end tenancy.

Based on the affirmed testimony of the Tenant and the Landlord, I find there is insufficient evidence the Tenant was not able to occupy the rental unit while the carpeting was being replaced with flooring. Further, I do not find the Landlords failed to comply with the Act, regulation, or tenancy agreement, and I do not find the Tenant suffered a damage or loss. Therefore, I find the Tenant is not entitled to a monetary order for monetary loss.

As the Tenant has been unsuccessful in their claim, I decline to award them the filing fee in accordance with section 72.

Section 44 of the Act lists the ways a tenancy ends, including part (1)(d): "the tenant vacates or abandons the rental unit." Therefore, I find the tenancy has ended, and the Landlords are entitled to an order of possession, effective immediately.

Conclusion

The Tenant's application is dismissed.

The tenancy has ended.

I hereby grant the Landlords an order of possession, which must be served on the Tenant and which is effective immediately. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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: November 09, 2021

Residential Tenancy Branch