Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OT FFL
For the tenant: MNDCT OLC LRE RR FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for permission to subdivide the property and remove an outbuilding, and to recover the cost of the filing fee. The tenant applied for a monetary claim of $1,500.00 for the cost to replace a $500.00 fence, for a rent reduction of $900.00, for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

On October 21, 2021, the tenant, tenant's counsel, DM (tenant counsel), a witness for the tenant, DM (witness), the landlord, landlord's counsel, JT (landlord counsel) and a support person for the landlord, AP (support) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Counsel for both parties were not required to be affirmed as both have already sworn an oath when called to the Bar.

Other than the "Precis of Law" document, which was excluded due to service issues, all other documents were confirmed as having been served on both parties with both parties having confirmed they have reviewed all other evidence. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and

findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

An Interim Decision dated October 22, 2021 (Interim Decision) was issued and should be read in conjunction with this Decision.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

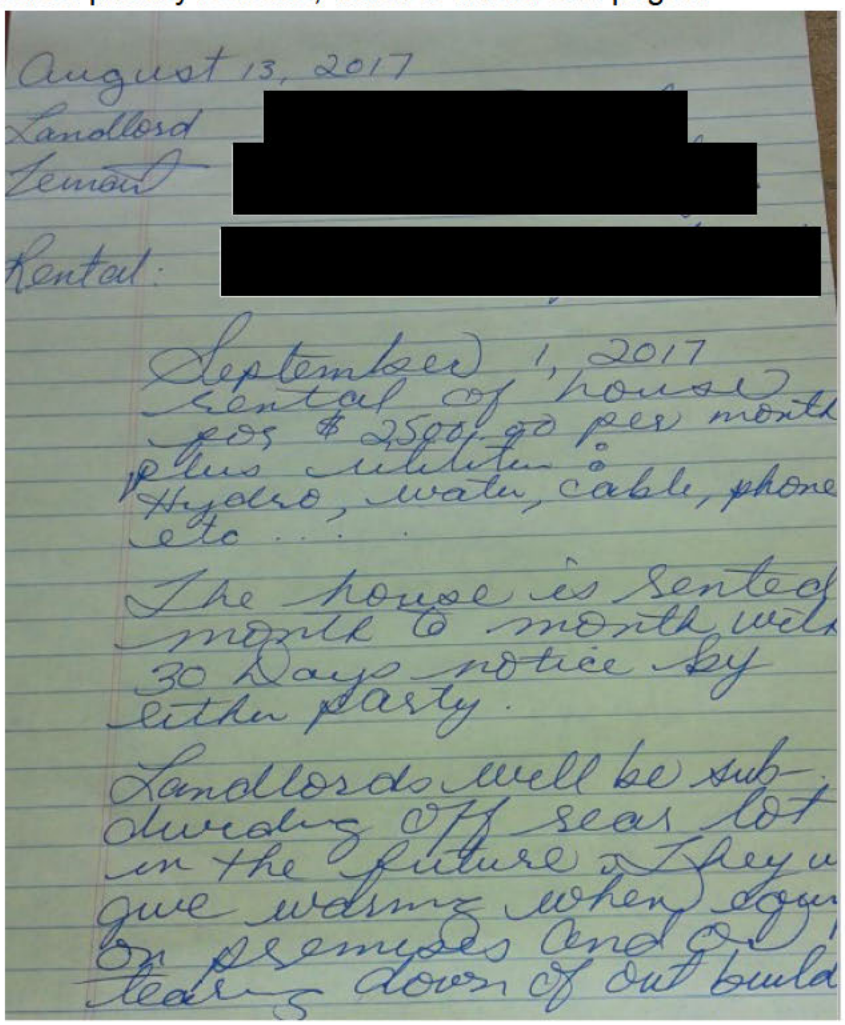
Issues to be Decided

- Has the landlord provided sufficient evidence to allow them to subdivide the rental property?
- Has the landlord provided sufficient evidence to allow the removal of an outbuilding?
- Have the tenants submitted sufficient evidence to support a monetary claim?
- Have the tenants provided sufficient evidence for an order to suspend or set conditions on the landlord's right to enter the unit, site or property?
- Have the tenants provided sufficient evidence to support being compensated for the removal of a fence?
- Have the tenants provided sufficient evidence to support a rent reduction?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties were advised that the tenancy agreement does not comply with the requirements of the Act, which I will address later this decision.

Below is a redacted version of the tenancy agreement, with personal information redacted for privacy reasons, which is a total of 2 pages:



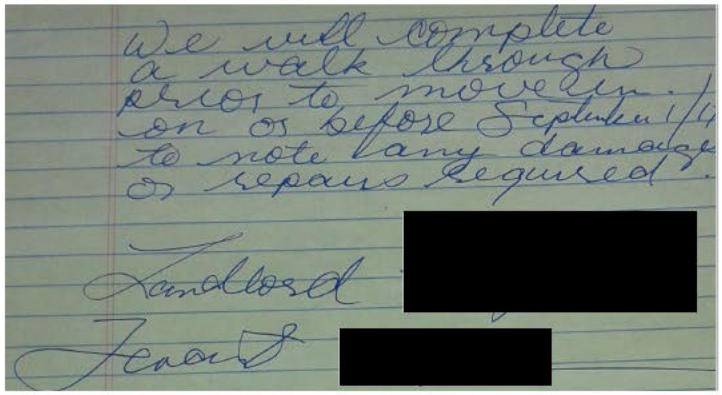
August 13, 2017
Landlord [redacted]
Tenant
Rental: [redacted]

September 1, 2017
Rental of house
for $ 2500.00 per month
plus utilities:
Hydro, water, cable, phone
etc...

The house is rented
month to month with
30 Days notice by
either party.

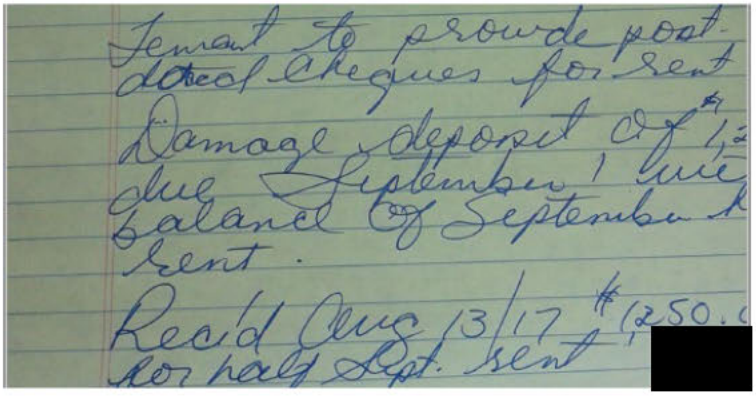
Landlords will be sub-
divding off rear lot
in the future. They
give warning when begin
on premises and
tearing down of out build

Page 2 reads as follows:



We will complete
a walk through
prior to move in
on or before Septem 1/
to note any damage
or repairs required.

Landlord [redacted]
Tenant [redacted]



The tenancy began on September 1, 2017, and both parties confirmed during the hearing that monthly rent was currently $2,562.00 per month and due on the first day of each month.

Landlord's application

The landlord and landlord's counsel clarified during the hearing that the landlord is no longer seeking to subdivide the rental property and instead is requesting to build a garden suite (Garden Suite). The parties were advised that the tenancy agreement, does not list a Garden Suite, which I will address later in this decision.

The parties agreed that the home is a two-storey house with a garage and carport. The landlord testified that a permit has already been obtained to remove the "outbuilding" (Outbuilding). The tenancy agreement includes the following wording subdividing and the Outbuilding:

> "Landlords will be sub-dividing off rear lot in the future. They will give warning when [illegible] on premises and or tearing down of out building."

The tenant testified that they are concerned that the garage and carport will be damaged if the Outbuilding is removed as the garage and carport are attached to the Outbuilding.

Tenants' application

The tenants have claimed $500.00 for the replacement of a fence and submitted no quotes or other supporting evidence regarding the cost being claimed for the fence.

The tenants have also claimed $900.00 for a rent reduction and provided no detailed breakdown at how they arrived at the amount of $900.00 being claimed. The tenants did supply this statement in their application; however:

> Landlord interfered with quiet enjoyment and substantially altered things supplied with the tenancy; specifically cut down 3 fruit trees, the hedge, and removed fencing. Landlord has continuously harassed the tenants because her Notice to End Tenancy was dismissed on October 2, 2020 in Dispute [file number redacted], when it was specifically found, among other things, that so long as the rent was paid within the month there was no default.
>
> [File number redacted to protect privacy]

Several photos were submitted in evidence, however the photos that were dark and blurry were of no weight due to the photos being dark and blurry.

The tenant requested that they be able to do the yard maintenance as the landlord has attended without notice and they are feeling harassed by the landlord. The tenant made it clear that they do not require the assistance of the landlord to do yard maintenance. The landlord claims the tenants were not maintaining the yard of the rental property to a reasonable standard.

The tenant did not submit any photos of the fruit trees they claim the landlord removed from the property since the start of the tenancy. The tenants are seeking a rent reduction of $900.00 per month due to fruit trees being removed, the hedge being ruined, and fencing being removed.

Counsel for the landlord stated that the fruit trees were quite old and were between 15 and 20 years old and many were rotting. Landlord's counsel also stated that 1 fruit tree had fallen down on its own due to snow and that notice was given before it was removed by the landlord. The tenants deny that proper notice was given before the fallen tree was removed and deny it was a fruit tree, saying it was a decorative "snowball" tree that fell due to the heavy snow.

The tenants claim that there are no more fruit trees on the rental property, and the tall hedge that used to be 2 feet deep by 15-20 feet long, and 8-9 feet high is now 2 feet deep by 5 feet wide and 8-9 feet high. There are no before photos to support the tenant's testimony as to the size of the hedge at the start of the tenancy.

Landlord's counsel referred to a prior decision from August 29, 2016, which supports that compensation was not provided to the tenants when a tree/trees were removed.

While the last four digits of the decision were provided, the entire file was not provided and as a result, the decision could not be reviewed. I will deal with the fact that I am not bound by previous RTB decisions in my analysis below.

Tenant's counsel cited the following case law for my consideration:

1. McIntyre v. Thompson, 1928 1 Western Weekly Reports, 907.
2. McPherson v. Norris, 1856 Carswell Ontario 343.
3. CET75540-18 2018 Canlii 88593 (Ontario)

Landlord's counsel stated that the tenant's counsel has referred to Ontario, which has a different Act than the Residential Tenancy Act (RTA) in BC. Further, landlord's counsel has cited the first 2 cases, which pre-date the creation of the RTA in BC and are not relevant as they were heard before the RTA was created in BC.

Analysis

Based on the documentary evidence, the testimony of the parties and the witness, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and their claim fails.

In the applications before me, I find that both parties have the onus to prove their own claims. I will address the landlord's claim first, followed by the tenant's claim.

Landlord's claim

Firstly, section 13 of the Act sets out the requirements for tenancy agreements, which reads as follows:

Requirements for tenancy agreements

13(1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;

(b) **the correct legal names of the landlord** and tenant;

(c) the address of the rental unit;

(d) the date the tenancy agreement is entered into;

(e) **the address for service and telephone number of the landlord or the landlord's agent**;

(f) the agreed terms in respect of the following:

(i) the date on which the tenancy starts;

(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;

(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) **the day in the month, or in the other period on which the tenancy is based, on which the rent is due;**

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[emphasis added]

I find the tenancy agreement submitted by the landlord does not comply with all of the requirements of section 13 of the Act.

In addition, I find the tenancy agreement to be lacking in sufficient details to set out what portion of the property the landlord intended to "sub-divide" and was also vague in terms of timeline stating "future". *Contra Proferentem* is a rule courts use when interpreting contracts. In plain English it means that if there is an ambiguous clause in a contract it will be interpreted against the party responsible for drafting the clause. I find the subdivision clause of the tenancy agreement was extremely vague. As the landlord was the maker of the contract, ambiguity in the terms of an agreement must be interpreted in favour of the tenant. As a result, I find that the subdivision clause to be unenforceable. Consequently, I make the following orders pursuant to section 62(3) of the Act:

I ORDER that landlord is not permitted to subdivide any portion of the rental property during the tenancy.

I ORDER that the landlord may not build a garden suite during the tenancy as the tenancy agreement does not mention a garden suite or potential garden suite.

Regarding the Outbuilding, I find that term is enforceable and that the Outbuilding may be removed as long as the required permits have been issued to the landlord and proper notice under Section 29 of the Act has been given in writing to the tenants.

Given the tenant's concern about potential damage to the garage and carport due to the Outbuilding being attached to the garage and carport, I make the following orders pursuant to section 62(3) of the Act:

I ORDER that the garage and carport are not to be removed or damaged in any way by the landlord when removing the Outbuilding.

I ORDER the landlord to comply with section 29 of the Act in terms of notice to the tenants in relation to the Outbuilding and for the remainder of the tenancy.

Failure to comply with my Order could result in the tenants' seeking compensation under the Act for a violation of this Order.

As the landlord's application was not fully successful, I decline to grant the filing fee to the landlord.

Tenant's claim

$500.00 claim for fencing – Although the tenants have claimed $500.00 for the replacement of a fence removed by the landlord, I find the tenants have failed to meet parts three and four of the four-part test for damages or loss described above. I have no documentary evidence, photos or quotes to support how the tenants arrived at the $500.00 amount claimed. Therefore, I dismiss this portion of the tenant's claim due to insufficient evidence, without leave to reapply.

$900.00 per month rent reduction - The tenant via their counsel submits that the tenant is seeking a rent reduction of $900.00 per month. As the monthly rent is $2,562.00, I find that the tenants are seeking a 35.13% reduction in their monthly rent due to the landlord allegedly cutting down 3 fruit trees, removing a portion of the hedge, and removing a fence and "continual harassment" as stated in the rent reduction portion of their application. Firstly, I find the fence-related portion of their claim was already dismissed above and cannot be duplicated here as I find the tenants failed to provide sufficient evidence related to the fence. I also find that the tenants applying twice for the fencing costs, would result in unjust enrichment for the tenants.

Secondly, I am not satisfied that the tenants have provided compelling evidence that they are entitled to a reduction of 35.13%, or any other amount. While it is clear the parties do not get along with each other, what is not clear is that the tenants have proven their loss of quiet enjoyment, the enjoyment of 3 fruit trees and loss of a portion of the hedge. I find the fact that the trees were old and may have died naturally to be just as possible as the landlord removing them prematurely, and that the tenants have failed to meet the onus of proof related to the fruit trees as a result. I also find that I have no photo evidence of the hedge to support the testimony of the tenants and am unable to determine if there was a problem with the hedge that required additional pruning by the landlord.

Thirdly, I am not satisfied that the tenants have provided compelling evidence to support the landlord has "continually harassed" them. I find that most of the issues between the

parties relate to maintenance of the yard of the rental unit. Therefore, in the interests of assisting the parties, I make the following order pursuant to section 62(3) of the Act.

> **I ORDER** the tenants be permitted to perform the yard maintenance of the rental property; however, if the tenants allow the rental property to fall below a reasonable standard of cleanliness, the landlord must communicate with the tenants in writing to advise of any cleanliness concerns **before attending the rental property to do the work themselves**. This also means that the landlord must give the tenants a reasonable amount of time to return the rental property to a reasonable standard of cleanliness. For example, should the bylaw department issue a letter advising the owners of the rental property that the property has become unsightly or in need of cleanup, the landlord may give notice to the tenants and attend the property to cleanup as required and may also apply for compensation as the tenants have requested to do the yard maintenance themselves.

I find that if the fruit trees were as important to them as they state they are, there would be before photo evidence or digital evidence such as video recordings to support how the fruit trees benefited the tenants. There are no before photos or videos before me. In addition, pursuant to section 64(2) of the Act, I am not bound by any previous RTB decisions. Furthermore, the tenant's counsel did not provide a copy of the decision in evidence they spoke of during the hearing, and I find that I would not be bound by that as I am not convinced the facts replicate what are before me in this specific case without being able to read that decision.

I find the black and white photos to be no weight from the landlord as they are blurry and dark. I find the after photos of the yard from the tenants to show a reasonably clean yard, and I am not convinced there is anything in those photos that justifies a rent reduction.

I agree with landlord's counsel that the 3 cases cited by tenant's counsel are of little weight as the first two pre-date the Act and the third is from Ontario and their Act is not the same as the BC RTA.

Given the above, I find that tenants have failed to meet the burden of proof for any rent reduction due to insufficient evidence. I therefore dismiss their application, without leave to reapply.

The filing fee is not granted as the tenant's application has failed.

Conclusion

The landlord's claim is mostly unsuccessful. Their filing fee is not granted.

The tenants' application fails. Their filing fee is not granted.

I caution the parties to comply with my orders described above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2022

Residential Tenancy Branch