



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

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 a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

Tenant LF (the tenant) and landlord CB (the landlord) attended the hearing. The landlord was assisted by advocate JM. 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 parties affirmed they understand the parties are not allowed 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 \$5,000.00."

Preliminary Issue – Service

The tenant affirmed she served the notice of hearing and the evidence (the materials) the landlord via registered mail. The tenant believes she mailed the package on November 30, 2021.

The landlord confirmed receipt of the package containing only the notice of hearing.

The landlord submitted the response evidence to the Residential Tenancy Branch (RTB) but did not serve it to the tenant.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].**

(emphasis added)

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

The parties offered conflicting testimony about service of the tenant's evidence. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant did not provide documentary evidence to support her claim that she included in the package her evidence. I find the tenant did not include in the package her evidence.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

I accept the landlord's testimony that the landlord did not serve the response evidence.

Per Rules of Procedure 3.1 and 3.15, I excluded all the evidence documents submitted by the tenant and the landlord.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his last name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to 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 June 01, 2017 and ended on October 15, 2021. Monthly rent of \$800.00 was due on the first day of the month. The tenant and co-tenant LE had a verbal tenancy agreement with the previous owner JA. The tenant and LE paid rent together to JA. The landlord purchased the rental unit from JA in August or September 2021.

The landlord stated the tenancy ended on October 17, 2021. The landlord does not know how much rent was and when the tenancy started. The landlord purchased the rental unit from JA and the sale was finalized on August 01, 2021. JA informed the landlord that the only tenant was LE and he only communicated with LE. The landlord testified that the tenant texted him on October 17, 2021 to inform that she moved out. On October 18, 2021 the landlord changed the rental unit's locks.

The tenant claims compensation in the amount of \$3,710.00, as the landlord disposed of her personal belongings without her authorization.

The tenant said that her belongings were a queen size bed, a washing machine and a drier, other appliances, dishes, curtains and her clothing. The tenant estimates her belongings were worth \$3,710.00, as they were not new.

The tenant affirmed she had a common-law relationship with LE and their relationship ended on October 10, 2021. The tenant stated she informed the landlord and JM on October 16, 2021 that she separated from LE and that she needed more time to remove her belongings.

The landlord and JM testified the tenant asked for more time to remove her belongings on October 15, 2021 but she did not inform them that she separated from LE and did not indicate when she would move out.

The landlord said that LE authorized him to dispose of all the household items. The landlord read a document dated October 18, 2021:

I, LE, former tenant of [rental unit's address], hereby confirm that all remaining household items, personal belongings and garbage left inside and outside of [rental unit's address] as of October 18, 2021 can be disposed of by CM to the landfill.

The tenant affirmed she is not aware of the October 18, 2021 document.

The landlord stated that LE offered to pay for the landfill charges and informed the landlord that LE and the tenant were moving to a manufactured home.

The tenant testified she moved to her mother's house.

The landlord started disposing the tenant's belongings on October 18, 2021 and finished disposing of them on October 23, 2021. The landlord said the disposed items were not worth any amount of money and could not be given for donation, as they were in poor condition.

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.

RTB 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.

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 the case is on the person making the claim.

Tenancy agreement

The Act defines tenancy agreement as:

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

RTB Policy Guideline 12 states:

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more

tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Based on the tenant's convincing testimony, I find the tenant and LE had a verbal tenancy agreement with JA. The tenant and LE were jointly and severally liable for the terms of the tenancy agreement.

Based on the landlord's convincing testimony, I find the landlord purchased the rental unit from JA on August 01, 2021 and became the landlord on that date.

Tenant's Belongings

I accept the uncontested testimony that the landlord disposed of the tenant's belongings in October 2021.

The parties offered conflicting testimony about the value of the tenant's belongings. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

RTB Policy Guideline 16 states that:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

[...]

A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

The tenant did not provide documentary evidence to support that her belongings were worth \$3,710.00. The tenant did not call any witness. I find the tenant failed to prove, on a balance of probabilities, that she suffered a loss in the amount claimed.

Thus, I dismiss the tenant's claim for compensation.

I am not making a finding regarding the landlord's response argument that he was authorized to dispose of the tenant's belongings, as this is not necessary to determine this dispute.

Conclusion

I dismiss the tenant's claim 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 28, 2022

Residential Tenancy Branch