



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, PSF, LRE, LAT, OLC**
PSF, LAT, CNC, MNDCT, FFT

Introduction

This hearing dealt with two applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order to authorize the tenant to change the lock pursuant to section 31;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant JW attended on behalf of both tenants (“the tenant”). DT attended as agent for the landlord (“the landlord”). DT explained that her spouse is RT, the son of the landlord CT.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Each party confirmed they were not recording the hearing.

Each party provided the email addresses to which the Decision shall be sent.

Preliminary Issue – Withdrawal of Claims

At the outset, the tenant stated they moved out of the unit and accordingly withdrew all claims except for claims under sections 67 and 72, a Monetary Order and reimbursement of the filing fee.

As no evidence was submitted with respect to the withdrawn claims, those claims are dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

This is an application by the tenant for a Monetary Order of \$500.00 for the destruction by the landlord of a “fairy garden”, referred to as “the garden”. The landlord requested the application be dismissed.

The parties submitted considerable conflicting testimony hearing and evidence. Not all this evidence is repeated in my Decision. I reference only key, relevant and admissible facts in support of my findings.

Tenancy

The parties agreed on the background of the tenancy as follows and submitted a copy of the tenancy agreement. The tenancy began on December 1, 2019. Rent was \$1,000.00 and the tenant provided a security deposit of \$500.00 at the start of the tenancy. The landlord still holds the security deposit, as they have applied for dispute resolution in another matter. The tenant moved out on July 18, 2022.

Previous Hearings

This is the third or fourth hearing between the parties. The previous submitted file numbers are referenced on the first page.

The tenant stated the first hearing involved an application by the tenant to dispute a One Month Notice dated April 6, 2022 which was granted.

On July 12, 2022, the parties agreed to a settlement including a provision the tenant would vacate the unit.

On July 29, 2022, the landlord was ordered to pay the tenant \$418.20 regarding failure to provide a service.

Tenant's Claims

The tenant testified as follows. Their unit included an outdoor area in which the tenant planted a small garden with a roof. She explained that her brother, “her closest friend”. had died in 2020. The garden was created to help the tenant deal with the emotions surrounding his loss. The tenant said she carefully recreated the town in which she and her brother grew up. She built and purchased several small houses. In each house, she

placed furniture and other significant objects which she made or purchased. The tenant placed the urn containing her brother's ashes in the garden. The project took her 6 or 7 months to complete. The tenant submitted pictures of the completed garden which had a roof supported by pillars.

The tenant stated that DT, the agent attending at the hearing, and RT, the landlord's son, periodically visited the area and eventually moved close to the unit, a converted garage. The tenant believed they wanted them to move out so they could demolish the building and construct a new house.

The tenant stated that the landlord conducted an inspection of the unit in April 2022. On the day of the inspection, an argument arose as DT brought other people with her for the inspection. The tenant was fearful of contracting covid and insisted that only one person enter the unit.

After the inspection by DT, the tenant testified that DT became enraged, losing her temper, screaming, and kicking at the garden. First, DT kicked the corner post that held up the roof. Then, she kicked all the contents, scattering and destroying them. This included the urn which the tenant said has not been found. The tenant submitted pictures of the garden showing a collapsed roof, broken pieces, and scattered fragments.

The tenant testified as follows. She provided the following reasons for her understanding of why DT lost her temper and behaved as reported. As stated earlier, DT's husband is the son of the landlord CT. DT and her husband wanted the tenant out of the unit so they could take it over. The tenant's submitted a copy of a letter to the landlord, dated May 2, 2022, which stated:

We have paid rent every month. Done all the snow removal as well as landscaping in summer for our place and yours. I have baked you cakes, pies, cookies and brought your husband dinner when you were away. I have watched your dog while you went skiing. I have played with your grandkids. I have watered and picked n froze your garden goodness while you were away. [The male tenant] has worked with all the neighbors. There hasn't been anything he was asked to do to help that he's hasn't done. He built your shop with [DT's husband RT]. Fixed your shed and several pieces of machinery for you guys. He's gone fishing and flying with [DT's husband RT] on numerous occasions. No

one is intimidated by myself or [the male tenant]. I'm not sure your need to paint us dark in this situation. But it's nothing more than allegations and it's hurtful.

The tenant testified that DT and RT began to create many difficulties for the tenant and became "bullies". They attended at the unit under the influence of alcohol. RT made an offensive sexual overture to the female tenant. DT reported the tenant to the police. DT called the female tenant names.

The tenant testified she had a therapy dog during the tenancy. The landlord suddenly objected to the presence of a pet.

The tenant stated the landlord then issued a One Month Notice dated April 6, 2022 to end the tenancy.

The tenant wrote as follows in her submission:

The eviction is due to having a dog. There is no no pets policy in lease agreement. They are making false accusations without any proof. They are coming on property without notice constantly. They are Harrassing me while I walk to mailbox. They are destroying personal property. They are bringing neighbors over to our residence and speaking rudely to and about us. I'm afraid of what They will do next. They have told us they need us out so they can tear house.

The tenant stated the destruction of the garden, on top of the campaign to get them out, made the situation unbearable. The tenant moved out on July 18, 2022 following an application by the landlord for Early Termination and a settlement agreement.

In support of her claim, the tenant submitted many documents, photographs and email exchanges with the landlord. The photographs show a small garden as described by the tenant and after the destruction. The tenant said she spent countless hours creating the garden. She did not submit receipts of expenses.

Landlord's Reply

DT acknowledged she kicked the post of the garden's roof. However, she denied she destroyed the garden, lost her temper or screamed. DT testified as follows. Her

husband, RT, returned to the unit and repaired the single damaged post on the garden's structure. The tenants were unsatisfactory tenants. Any demand made by the landlord, such as that the unit be pet free, was reasonable. As the landlord stated in their written submissions of June 18, 2022:

You asked if you could look after your "dear friends" dog while she was recovering from a car accident in the hospital. The dog came and never left till it died. You then proceeded to get another dog totally without prior approval and then pulled the therapy dog card to which you never did provide the proof requested by the landlord. You then said it would take time to "rehome" him "if you decide to" which you never did. You were given a breach of lease notice but did nothing to rectify the situation. Your attitude is you do what you want and no one tells you different and if they do you make trouble for them.

I have never come over to your house with any type of alcohol, and wine is not even my drink of choice so? You and [male tenant] came and sat in our driveway and I read you the breach and you got your panties all stuck in your crotch and got up and stomped off like a 2 year old. [Male tenant] stayed and talked for a long time about your situation and where the dog(s) really came from. They were both rescue dogs that you were being paid to take care of. Due to covid and the moratorium on evictions in BC I could not further pursue this until this April when it was lifted.

...

BC assessment has never been called since this letter of yours regarding the teardown of the buildings on the property. Giving false information is a criminal offense, and it should be taken seriously. Whom did you speak to? Names, titles, dates, phone numbers, it's all a lie of yours.

This is horrific what you are doing!

The landlord submitted photographs of the garden and stated it had never been destroyed as claimed by the tenant.

In summary, the tenant requested an award of \$500.00 based on her estimate of the cost of purchase of items for the garden. The tenant requested reimbursement of the filing fee.

The landlord requested the application be dismissed without leave to reapply.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here in a hearing which lasted two hours. The relevant and important aspects of the claims and my findings are set out below.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (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.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss

results from a party not complying with this 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.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

Credibility

I acknowledge that the landlord disagreed with the tenant's version of events in key aspects. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Given the conflicting testimony, I have considered credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I do not find the landlord's submissions to be persuasive. I find the landlord's suggestion that the tenant is untruthful or exaggerating to be unsupported by the evidence.

I find the tenant's evidence to be the more credible in the circumstances as it was supported in all key aspects by documentary evidence. The tenant's testimony was believable, calm, and forthright, and supported by photographs. I find the tenant's recollection and recounting of the events leading to the destruction of the garden to be convincing and credible. I find the landlord's assertion that she did limited damage to be unlikely and improbable.

Therefore, I prefer the tenant's evidence in all respects. Where the evidence of the parties differs, I give greater weight to the tenant's version of events.

Findings

On a balance of probabilities and for the reasons stated below, I find the landlord destroyed the tenant's garden on which the tenant spent time and money. As stated, I reject the landlord's testimony as unlikely that she only destroyed part of it and then promptly repaired it.

I find the landlord is responsible for the destruction. I find the tenant has established all four parts of the test with the exception of the amount of the damage.

While the tenant claimed damages of \$500.00 the tenant did not submit any receipts.

Accordingly, I find this situation calls for nominal damages.

I considered Policy Guideline 16: Compensation for Damage or Loss which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find this is an appropriate situation for the award of a nominal amount.

Considering the above, the testimony, the evidence and this Policy Guideline, I therefore award the tenant a nominal amount for the damage in the amount of \$300.00.

Filing fee

As the tenant has been successful in this matter, I award the tenant reimbursement of the filing fee of \$100. 00.

In summary, I grant the tenant a Monetary Order in the amount of \$400.00.

Conclusion

I grant a Monetary Order to the tenant in the amount of \$400. 00. This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province 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: August 24, 2022

Residential Tenancy Branch