



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, AAT, 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 the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- 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 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. 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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 his ex-girlfriend served the notice of hearing in person to the landlord. The tenant believes his ex-girlfriend included the evidence in the package.

The landlord confirmed receipt of the notice of hearing and that he had enough time to review it. The landlord stated the tenant did not serve evidence.

The landlord served the response evidence via registered mail on December 27, 2022. The landlord submitted a registered mail receipt indicating the package was mailed on December 27, 2022.

The tenant testified he did not receive the response evidence.

I accept the uncontested testimony the tenant's ex-girlfriend served the notice of hearing in accordance with section 89(1) of the Act.

Rule of Procedure 3.5 states the applicant must be prepared to demonstrate that he served the evidence.

I find the tenant's testimony about service of the evidence was vague and not convincing. Based on the landlord's convincing testimony, I find the tenant failed to prove, on a balance of probabilities, service of the evidence.

Rule of procedure 3.14 states:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I excluded the tenant's evidence, per Rules of Procedure 3.5 and 3.14.

Per section 90 (c) of the Act, the landlord's response evidence package mailed on December 27, 2022 is deemed received on January 01, 2023.

The hearing was on January 06, 2023.

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.

I excluded the landlord's response evidence, as it was served less than 7 days before the hearing, per Rule of Procedure 3.15.

Preliminary Issue – Vacant Rental Unit

Both parties agreed the tenant vacated the rental unit in November 2022.

The application for cancellation of the Notice, an order for the landlord to allow the tenant or his guests to access the rental unit, an order to restrict or suspend the landlord's right of entry and for the landlord to comply with the Act are moot, as the tenancy 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 cancellation of the Notice, an order for the landlord to allow the tenant or his guests to access the rental unit, an order to restrict or suspend the landlord's right of entry and for the landlord to comply with the Act.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for compensation for damage or loss?
2. an order to reduce the rent for repairs, services or facilities agreed upon but not provided?

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 claims 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.

Both parties agreed that monthly rent when the tenancy ended was \$725.00, due on the last day of the prior month. The landlord collected and currently holds in trust a security deposit in the amount of \$350.00 and a pet damage deposit in the amount of \$350.00.

The tenant did not serve his forwarding address and did not authorize the landlord to retain the security and pet damage deposits (the deposits).

Both parties confirmed their current addresses for service. The addresses are recorded on the cover page of this decision.

The tenant claims monetary compensation in the amount of \$550.00 because another tenant vandalized his belongings following instructions from the landlord.

The landlord said he did not instruct anybody to vandalize the tenant's belongings.

The tenant claims a retroactive rent reduction in the amount of \$600.00 because the landlord built an extra bedroom in the living room area and rented the new bedroom for \$900.00

The landlord affirmed he transformed the living room in a television room because the tenants did not clean the living room. The landlord did not rent this space.

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.

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.

Belongings

The parties offered conflicting testimony about the landlord vandalizing 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.

The tenant did not provide any documentary evidence to support his claim. The tenant did not call any witnesses.

I find the tenant failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act and the tenant suffered a loss.

I dismiss the tenant's claim.

Rent Reduction

The parties offered conflicting testimony about the landlord building a new bedroom in the rental unit's living room area.

The tenant did not provide any documentary evidence to support his claim. The tenant did not call any witnesses. The tenant did not explain how a television room reduced the value of his tenancy.

I find the tenant failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act and the tenant suffered a loss in the value of the tenancy.

I dismiss the tenant's claim.

Forwarding address

Per section 71(2)(b) of the Act, I order the tenant's forwarding address and the landlord's current address for service are sufficiently served five calendar days after the date of this decision.

The landlord is advised to address the deposits in accordance with section 38 of the Act.

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: January 09, 2023

Residential Tenancy Branch