



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPL, OPM, MNDCL-S
Tenant: CNL, MNDCT, RR, RP, PSF, LRE, LAT, OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on December 15, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on a Two Month Notice to End Tenancy for Cause (the Two Month Notice);
- an order of possession based on a mutual agreement to end the tenancy;
- a monetary order for compensation for monetary loss or other money owed; and
- an order permitting the Landlord to retain the security deposit.

The Tenant's Application for Dispute Resolution was made on November 21, 2022. The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling the Two Month Notice;
- a monetary order for compensation for monetary loss or other money owed;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the Landlord make repairs to the unit, site or property;
- an order requiring the landlord to provide services or facilities required by the tenancy agreement or law;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit or site;

- an order authorizing the Tenant to change the locks to the rental unit; and
- an order that the Landlord comply with the Act, Residential Tenancy Regulations, and/or the tenancy agreement.

The Landlord attended the hearing and was assisted by JAV, his daughter. The Tenant attended the hearing and was assisted by BC, her advocate. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, JAV testified that the Landlord's Notice of Dispute Resolution Proceeding package was served on the Tenant by taping a copy to the Tenant's door on December 12 or 13, 2022. A photograph depicting an envelope attached to a door was submitted in support. The Landlord also submitted a photograph depicting the envelope on the ground at the entrance to the rental unit. A notation provided by the Landlord indicates that the package was thrown on the ground by BC. In any event, the Tenant testified she did not receive any documentation from the Landlord in relation to the Landlord's application.

Section 89 of the Act does not permit a Notice of Dispute Resolution Proceeding to be served by attaching a copy to the party's door. In addition, the Tenant denied receipt of these documents. Accordingly, I find there is insufficient evidence before me to conclude that the Notice of Dispute Resolution Proceeding was served on the Tenant in accordance with the Act. As a result, I find the Landlord's application for dispute resolution is dismissed without leave to reapply.

Policy Guideline #17 confirms that when a landlord's request to retain a security deposit is dismissed, the arbitrator will order the return of the security deposit, whether or not the tenant has applied for dispute resolution for its return. In this case, the Landlord requested an order that he be permitted to retain the security deposit. However, the Landlord's claim has been dismissed. As the parties agreed the Landlord holds a security deposit of \$130.00, I grant the Tenant a monetary award of \$130.00 for the return of the security deposit held.

The Tenant testified that Tenant's Notice of Dispute Resolution Proceeding package was served on the Landlord in person on December 1, 2022. JAV acknowledged receipt on behalf of the Landlord. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The parties in attendance were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the parties agreed the Tenant vacated the rental unit on January 1, 2023, pursuant to a Mutual Agreement to End Tenancy. As a result, I find it is unnecessary for me to consider those aspects of the parties' applications unrelated to monetary relief. As the Landlord's application has been dismissed with leave to reapply, I consider only the Tenant's requests for monetary relief in this decision.

Issues

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to an order reducing rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed the tenancy agreement was not reduced to writing. However, they agreed the tenancy began on October 1, 2021 and ended on January 1, 2023. During the tenancy, rent of \$1,000.00 per month was due on the first day of each month. The parties agreed the Landlord holds a security deposit of \$130.00.

The Tenant seeks \$7,000.00 as compensation. The Tenant testified that the main heating system did not work effectively during the tenancy. The Tenant initially testified she spent two winters in the rental unit without heat and that ice formed on the inside of the rental unit. Photographs were submitted in support. However, the Tenant and her advocate subsequently testified there was heat in the bedrooms and the bathroom but that it was insufficient. The Tenant testified that the heating system was not serviced or replaced during the tenancy.

The Tenant also stated that she had to stay elsewhere “many times” during the tenancy. The Tenant also testified that there were instances of “unapproved” and “unscheduled” work taking place on the rental property and referred to tree removal. The Tenant testified that the work disturbed her after her dental surgery, resulting in further health impacts. The Tenant also testified that she had to stay in a hotel room on one occasion because the toilet in the rental unit did not work.

The Tenant also testified there was a “constant breach of quiet enjoyment and privacy” during the tenancy. The Tenant testified that the elderly Landlord would come to the rental unit without notice and look inside, and would attend the rental unit without notice.

In reply, JAV testified that the Tenant was told at the beginning of the tenancy that the propane heat was not going to be repaired. However, JAV testified that most of the cabin has electric heat. Only 240 square feet does not have electric heat but there is an oil heater for this area.

Further, JAV testified that the Landlord communicated with the Tenant whenever work was being done. JAV testified that in one instance, the Landlord redirected contractors working on the rental property to other matters when the Landlord learned the Tenant was being disturbed.

JAV also testified that the Landlord drives a quad on the property to deal with bears. JAV submitted that the number of bears on the property have been due to the Tenant’s recycling.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the Act. 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

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claims relating to heating, I find there is insufficient evidence before me to grant monetary relief sought. While I accept that the adequacy of the heating system was an issue during the tenancy, the Tenant had a responsibility to take steps to minimize the loss or impact. In this case, the Tenant testified she advised the Landlord of the problem but that nothing was done. She testified that she spent two winters in these conditions. However, the Tenant testified she did not previously make an application for an order that the Landlord perform repairs, and did not provide sufficient evidence that she took any further steps to ameliorate the problem such as purchase a space heater. Further, although the Tenant initially testified that there was no heat in the rental unit for two winters, she subsequently conceded there was electric heat in the two bedrooms and the bathrooms. The Tenant also did not dispute there was oil heat in the remaining area in the rental unit.

In addition, I find there is insufficient evidence before me to confirm the value of the loss. While the Tenant's application describes a claim for \$7,000.00 relating to several losses, the Monetary Order Worksheet submitted into evidence seeks \$9,000.00 relating to heating issues only.

With respect to the Tenant's claim that she incurred a loss or suffered inconvenience because she had to stay elsewhere during the tenancy, I find there is insufficient evidence before me to grant the relief sought. I was not referred to any evidence – receipts or statements describing the amount of the loss – in support.

With respect to the Tenant's claim relating to loss of quiet enjoyment, section 28 of the Act confirms that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, and use of common areas for reasonable and lawful purposes. Policy Guideline #6 describes disturbances that may give rise to a breach of quiet enjoyment as substantial, and frequent and ongoing. A temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.

Although the Tenant submitted that the Landlord attended the rental unit without notice and looked into the rental unit, and performed maintenance around the rental property, I find there is insufficient evidence before me to conclude that the Landlord caused anything other than a temporary inconvenience.

Considering the above, I find that the Tenant's requests for monetary relief are dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed without leave to reapply.

By operation of Policy Guideline #17, I grant the Tenant a monetary order for \$130.00 for the return of the security deposit held by the Landlord. the order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed 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: February 7, 2023

Residential Tenancy Branch