# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

## DECISION

Dispute Codes **MNDCT, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledge service of the landlord's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided
Is the tenant entitled to a monetary order for compensation?
Can the tenant recover the filing fee?

Background
At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.
While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant says that the landlord owes him money because the tenant did work and purchased supplies for the property and because the tenant enriched the soil with compost during the tenancy and the landlord has not compensated him for it. The tenant also alleges that the landlord collected illegal rent increases during the tenancy and he wants the overpayments returned to him. Lastly, the tenant claims the landlord evicted him in order to get a higher paying tenant and he wants to collect a year's rent for this.

The landlord argues that he has compensated the tenant for every invoice ever presented to him. The tenant does not have any proof of services or purchasing supplies and is not entitled to recover payment. Second, the tenant signed written agreements to the rent increases and started paying them in accordance with them. Lastly, the landlord moved his daughter into the rental unit, so the reason for ending the tenancy was fulfilled.

Evidence and Analysis

Section 7 of the Act states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

For the following reasons, I find the tenant has not proved his claim for damages.

The tenant first seeks $2812.63 work had been done and was not finalized. The tenant testified that during and just before the tenancy ended, he did work on the rental unit. The tenant supplied a list of things he did to the unit but could not provide any invoices for the work done or the supplies purchased. Nor did the tenant provide a schedule when the work was done, only testifying that it was before the tenancy ended. The landlord testified that if the tenant had supplied invoices, he would have paid the tenant however without any proof the landlord wasn't going to do so.

I find that the only evidence provided to substantiate this portion of the claim during the hearing was the tenant's testimony. As the tenant did not provide any documentary evidence to corroborate his version of events and has not met the evidentiary burden required to satisfy me the other party has failed to comply with any section of the Act (point 1 of the 4-point test). Further, the tenant has not provided any documentary evidence to prove the value of the damage or loss he seeks (point 3 of the 4-point test). Consequently, I dismiss this portion of the tenant's claim.

The tenant's claim to be compensated at $500.00 for compost he created on the land over the years is likewise dismissed as there is no indication the landlord has breached any section of the Act, regulations or tenancy agreement by failing to pay the tenant for this. (point 1 of the test). The tenant acknowledged during the hearing that the compost was not purchased but was created from waste material. Further, the tenant guessed as to how much compost was created during the tenancy. As such, I also find the tenant unable to prove the value of the damage or loss (point 3) and I dismiss this portion of the claim.

I dismiss the tenant's claim seeking $7,500.00 "excessive rent". During the hearing, the parties both testified that the tenant signed two written agreements to increase the rent. The first agreement, dated January 26, 2016 was never complied with, however the second one, dated June 17, 2017, effective August 1, 2017 was effective. The tenant testified that although he knew the rent increase was "illegal" he agreed to pay it, justifying the added rent is cheaper than losing more heat from a drafty window the landlord promised to fix. The landlord countered that the tenant took in additional occupants in the rental unit at $900.00 per month, effectively reducing the tenant's portion of rent to $200.00 per month.

The legal doctrine of Estoppel holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. The tenant made a conscious choice to accept the increased rent rather than refusing it or filing an application with the Residential Tenancy Branch disputing it. For the tenant to concede paying the increased rent and then seek to have the increased rent returned to him after the tenancy ended would be unjust. Once again, when the rent increase was imposed upon him, the tenant could have disputed it, but he chose not to do so. Based on the legal doctrine of estoppel, I dismiss the portion of the tenant's claim seeking to be compensated for the increased rent.

Lastly, the tenant seeks $15,000 for false representation on eviction notice. I take that to be compensation under section 51(2) for the equivalent of 12 times the monthly rent payable under the tenancy agreement for the landlord not using the rental unit for its stated purpose for at least 6 months from when the tenancy ended. Of note, this tenancy ended by settlement agreement entered into during a dispute resolution hearing on October 15, 2020 (the file number is recorded on the cover page of this decision). Neither party disputed that the tenancy ended due to the landlord serving a 2 Month Notice to End Tenancy for Landlord's Use upon the tenant under section 49.

The tenancy ended for the rental unit to be occupied by the child of the landlord. The tenant argues that the landlord's daughter did not occupy the rental unit after he moved out, citing an unknown car in the driveway. The landlord and his daughter both testified that she and her boyfriend moved into the unit immediately after the tenant left and stayed there for 9 months. In September, 2021, the daughter decided to move back with her parents after breaking up with her boyfriend. It was the boyfriend's car the former tenant saw in the driveway of the rental unit.

The daughter acknowledged that about a month after moving into the house, she moved into the lower unit of the house and rented the upper portion to a tenant for April 1, 2021. Copies of the tenancy agreement to the daughter and to the second tenant were provided as evidence for this hearing.

Based on the evidence before me and the testimony of the parties, I am satisfied the tenant's daughter occupied the rental unit for 9 months, commencing right after the tenant vacated it. However, I find that as of April 1, 2021, she didn't occupy the entire house and found a tenant to occupy the upper space while she and her boyfriend

continued to occupy just the lower unit. As of September, 2021, the new tenant occupied the entire rental unit, both upper and lower.

In this case, the landlord ended the tenancy for the stated purpose of having his daughter occupy the rental unit however his daughter did not occupy the entire rental unit for the entire 6 month period required under the Act. As stated in Residential Tenancy Branch Policy Guideline 50 [Compensation for Ending a Tenancy] under part C: **Accomplishing the Purpose/Using the Rental Unit**:

*A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit,* ***or a portion of the rental unit*** *(see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.*

Although the landlord's daughter felt the entire house was too big for her, she was required to remain occupying the entire house for at least 6 months and not rent the upper unit to another tenant until that 6-month period ended. In this case, since the tenancy ended on November 30, 2020, the earliest the landlord could have re-rented the upper unit would have been June 1, 2021. It does not matter that the landlord's daughter was named as the landlord in the tenancy agreement with the occupant of the upper unit; the fact remains that the daughter didn't occupy the entire rental unit for the full 6 months before it was re-rented.

Consequently, I find the landlord has not established that the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, contrary to section 51(2)(b). I find that the tenant is entitled to the compensation of the equivalent of 12 times the monthly rent payable under the tenancy agreement or **$15,000.00.**

As the tenant's application was successful, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $15,100.00.

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: April 12, 2023