



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC OLC ERP LRE FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants have applied for a monetary order for the cost of emergency repairs and money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order directing the landlords to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to suspend or set conditions on the landlords' right to enter the rental unit and to recover the filing fee.

The tenants, the landlords, and three witnesses for the landlords appeared at the teleconference hearing. The tenants, landlords and one witness provided affirmed testimony during the hearing. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

At the start of the hearing, the tenants stated they submitted evidence; however, it was not received by the Residential Tenancy Branch or the landlords. The tenants stated that the evidence served on them by the landlords did contain the documents they were relying on, so the hearing proceeded with the evidence of the respondent landlords.

At the start of the hearing, the tenants testified that they vacated the rental unit since submitting their application. As a result, **I dismiss** the tenant's application relating to their request for an order directing the landlords to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, and to suspend or set conditions on the landlord's right to enter the rental unit, without leave to reapply.

During the hearing, the tenants requested to reduce their monetary claim from \$4,400.00 to \$4,000.00 as the tenants confirmed they gave verbal permission to the

landlords to retain their full security deposit towards rent owed. The tenant's request was granted as it did not prejudice the other party.

I have reviewed all the evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the tenants entitled to a monetary order for the cost of emergency repairs or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that the tenancy began on May 1, 2012 and ended on September 30, 2012 when the tenants vacated the rental unit. During the tenancy, rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was paid by the tenants. The parties agree that the tenants permitted the landlords to retain the full security deposit for compensation towards unpaid rent for September 2012.

The tenants are claiming \$4,000.00 as compensation for alleged loss of enjoyment and harassment by the landlords during the tenancy. The tenants did not specify in their application what the amount of \$4,000.00 consisted of. During the hearing, the tenants stated that they arrived at the amount of \$4,000.00 as compensation for all five months in which they resided in the rental unit. Therefore, the tenants' claim is the equivalent for rent paid for five months at \$800.00 per month.

Due to the lack of any documentary evidence, the tenants were asked to provide their oral testimony in support of their monetary claim. The tenants described a total of four incidents.

The tenants described the first incident as occurring in either late July 2012 or early August 2012, however, were unable to provide a specific date. The tenants allege that the male landlord yelled and screamed at their son, however, the tenant provided no witnesses to corroborate their claim. The male landlord testified that the tenants' son was bouncing on his new radial tires and was asked to stop four times and did not. When the son did not stop bouncing on his new tires, the male landlord states he raised his voice and directed the boy to get off his tires. Later in the day, the male landlord testified that he saw the boy scratch his car, which was reported to the police. The

tenants did not dispute the landlords' testimony regarding this incident during the hearing.

The second incident described by the tenants occurred on August 22, 2012 inside the living room of the landlord. The male tenant states that he was sworn at and belittled while in the living room of the landlord. The landlords dispute the tenants' testimony, by stating that they did not swear, and felt that perhaps the tenant was embarrassed the tenant was corrected on several matters that he did not have correctly and perhaps was frustrated. The landlords provided a witness, their foster son, who testified that there was no swearing that afternoon. The witness was asked if there were any threats made, and the witness said no threats were made. The tenants had no questions for the landlords' witness and did not dispute the testimony of the witness regarding this incident.

The third incident described by the tenants relates to a call to the local police. The tenants were unable to provide the date of the call; however, the tenants were upset that the landlords, who live next to the rental unit, called the police regarding a car that was near the property. The tenants stated that what happened to that vehicle had nothing to do with the landlords. The landlords' response to this incident was that they noticed a vehicle around midnight at the edge of the property and that it was gone around 3:00 a.m., so they thought the car may have been stolen and felt they should report their concerns to the police. The male landlord stated that the police advised him that he did the right thing by calling the police to report his concerns. The tenants did not dispute the landlords' testimony regarding this incident during the hearing.

The fourth incident was described by the tenants as a call to the local phone company and an allegation that the landlord was attempting to state he was the tenant to the local phone company. The male landlord disputes this allegation and stated that the police called the male landlord to ask him if he called the phone company. The landlord advised he had not, and the police advised the landlord that they had no further questions. The male landlord stated that he had no reason to call the phone company and had not called them. The tenants did not dispute the landlords' testimony regarding this incident during the hearing.

Analysis

Based on the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for \$4,000.00 for harassment and loss of quiet enjoyment– The tenants did not submit any documentary evidence in support of their claim, did not provide any witnesses or witness statement to corroborate their claims.

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Given the above, **I find** that the tenants have failed to meet the burden of proof that the landlords did anything that violates the *Act*, regulation or tenancy agreement, resulting in any loss or damage to the tenants. Therefore, **I dismiss** the tenants' claim in full without leave to reapply due to insufficient evidence.

As the landlords' application did not have merit, **I do not** grant the recovery of the filing fee.

Conclusion

I dismiss the tenants' application in full without leave to reapply due to insufficient evidence.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 04, 2012

Residential Tenancy Branch