



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, OLC, RP, MNDC, PSF, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenant for the following issues:

- For a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the Act), regulation or tenancy agreement;
- For the landlord to provide services or facilities required by law;
- For the landlord to make emergency repairs for health or safety reasons and repairs to the unit, site or property;
- For the landlord to comply with the Act, regulation or tenancy agreement; and
- To recover the filing fee from the landlord for the cost of this application.

The tenant and the landlord's agent appeared for the hearing and no issues with regards to the service of documents under the Act were raised by any of the parties at the start of the hearing.

At the start of the hearing the tenant confirmed that he was moving out of the rental suite on November 30, 2013. As a result, the tenant withdrew all of his application apart from his monetary claim for compensation and to recover the filing fee.

Both parties also agreed that the landlord owes the tenant \$63.82 for unpaid Fortis BC utilities and \$37.79 for BC Hydro utilities. The landlord's agent consented to this being added to any award the tenant may be successful for.

Both parties provided documentary evidence in advance of the hearing and affirmed testimony during the hearing. However, only the relevant evidence in relation to the issues to be decided has been documented in this decision.

Issue(s) to be Decided

- Is the tenant entitled to monetary compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

Both parties agreed that the rental of the main floor of the property started on July 30, 2012. A written tenancy agreement was completed and the landlord collected a \$500.00 security deposit from the tenant on July 8, 2012. Rent in the amount of \$1,100.00 is payable by the tenant on the first day of each month.

The tenant testified that since 2012 the landlord has failed to make repairs to the rental suite and the tenant has been paying for services which he has not received. As a result the tenant seeks to claim \$3,000.00 from the landlord for damages associated with loss of peaceful and quiet enjoyment of the rental suite based on the following evidence:

- The tenant testified that the landlord intentionally caused the then downstairs renter to switch off the electricity to his rental suite on December 27, 2013 for a period of one hour. As a result the tenant wrote a letter to the then downstairs renter asking for this to cease and provided the landlord with a copy of the letter. The tenant testified that the landlord laughed when he mentioned it to him.
- The tenant testified that the same thing occurred on October 5, 2013 when again the power to part of his unit was shut off for a period of 12 hours. The tenant informed the landlord's agent appearing for this hearing to correct this and claims that the landlord's agent threatened to kick him out.
- The tenant claims that since November 2012 he has not been able to use the laundry facilities as the machine is faulty. The tenant claims that as a result he has had to spend \$50.00 to \$60.00, twice a week to do his laundry. The tenant only addressed this verbally with the landlord when the problem arose but provided text messages he had with the landlord's previous agent in March, 2013 asking for this to be corrected. The problem was finally fixed on October 16, 2013.
- The tenant claims that the landlord failed to repair the heating for his rental suite which he noticed was not working in October 2012. He informed the landlord's previous agent of this problem by text message, but the landlord failed to make the repair until October 12, 2013 when it was fixed. The tenant claims that the heating did not work properly because the landlord failed to service the furnace. In support of this the tenant provided photographs showing the date that the

furnace was last serviced in January, 2006 and the date that it was recently serviced in 2013.

- The tenant claims that when the tenancy started, the roof was leaking. The tenant informed the landlord by text message that the roof was leaking on October 12, 2012. The tenant testified that the roof is still leaking and provided photographs taken on October 25, 2013 of the leaking roof and buckets he is using to contain the leaks which occur during heavy rainfall.
- The tenant testified that the downstairs renter was smoking when his rental suite was a no smoking unit as evidenced by the e-mail advertisement of the rental suite at the start of the tenancy which stated 'NS' which the tenant confirmed as non smoking. However, the tenant claims that the downstairs renter had a marijuana operation and smoked outside the unit which led to second hand smoke exposure in his unit above where his children's bedrooms were. The tenant provided a text message from the landlord to the tenant on November 5, 2012 apologizing for causing the tenant 'marijuana insecurity and police problems'.
- The tenant claims that the landlord's current agent, appearing for this hearing, has engaged in a course of harassment including verbal threats to the tenant in front of his family and causing fear in his children. As a result, the tenant has felt the need to end the tenancy. In support of this, the tenant provided a text message of random senseless words which he claims are a threat made by the landlord's current agent.

The landlord's agent questioned the credibility and motive of the tenant, stating that the majority of the tenant's claim is based on issues which he states occurred at the start of the tenancy but only has evidence addressing them in writing with the landlord after a significant period of time.

The landlord's agent testified that he has been the landlord's agent since July, 2013 and the tenant has not addressed any of the issues with him formally in writing. The landlord's agent testified that he has provided the tenant written instructions not to contact the landlord but to contact him as he is now the agent. Since this time, the tenant has not abided by these instructions. The landlord's agent testified that all of the items the tenant mentioned have been fixed but could not confirm whether the roof had been fixed, testifying that if it had not been then he would be making no attempt to fix it as the tenant is leaving.

The landlord's agent denies turning off the tenant's electricity intentionally saying that the problem on the second occasion was due to the circuit breaker tripping. The

landlord's agent stated that as soon as the tenant contacted him about the lack of electricity in the rental suite he attended within two hours and flicked the breaker back on. The landlord's agent testified that the tenant claims that he had loss of heating, but still managed to incur significant utility costs for the period he claimed he had no heat for. The landlord's agent testified that, apart from the roof, the tenant's complaints have all been rectified.

The landlord's agent testified that he was willing to pay whatever compensation the tenant was requesting but refused to make the tenant an offer to settle the application.

Analysis

As a result, I have made the following analysis based on the evidence provided by both parties.

There is insufficient evidence to show that the landlord intentionally caused or was responsible for the power outages to the rental suite claimed by the tenant and therefore the landlord should not be held responsible for this. There is also insufficient evidence to show that the landlord's agent harassed the tenant. The tenant claims that the landlord sent a text message that was a threat. However, the words in the text message appear to be a mistake and appear to be cell buttons that were pressed by mistake.

In relation to the remainder of the tenant's claim, I find that the tenant is entitled to monetary compensation based on the evidence he has provided which satisfies me that the tenant has lost peaceful and quiet enjoyment of his property through the drug activity in the basement suite and loss of services. The tenant provided photographic evidence and text messages of conversations that he had with the landlord, the landlord's previous agent and the landlord's current agent showing that problems in terms of repairs needed and services not provided existed and the landlord failed to rectify them in an expedient manner.

Section 7 of the Act states that a landlord or tenant who claims for compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Whist the tenant has satisfied me that there is a valid claim for monetary compensation for the losses incurred, I find that the tenant failed to mitigate his losses. The tenant testifies that the problems occurred at the start of the tenancy and were still not rectified until a year later when the tenant is able to show that he addressed these issues with

the landlord by text message for some of the items claimed. The tenant did not deal appropriately with these issues by documenting them in a written letter to the landlord and formally asking for him to action them diligently. Neither did the tenant make an application for dispute resolution to formally have these items remedied at the earliest opportunity after the landlord failed to take action, instead choosing to address them towards the end of the tenancy.

As a result, I am only prepared to award the tenant 50% of his claim at \$1,500.00 in addition to the utilities agreed at the start of the hearing between the parties.

As the tenant has been partially successful in this claim, I also award the \$50.00 cost of the application for a total monetary award of \$1,651.61.

Conclusion

For the reasons set out above, I award the tenant a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,651.61**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The remained of the tenant's application is dismissed.

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: November 18, 2013

Residential Tenancy Branch

