Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF
MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and Tenant.

The Landlord filed on June 02, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on February 24, 2014, seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The Landlord noted that she did not receive two of the photographs that were submitted to the *Residential Tenancy Branch* by the Tenant. The Tenant confirmed that the photos may not have been the same in the Landlord's package.

Not serving the other party the same evidence that is submitted to the *Residential Tenancy Branch* is a contravention of section 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedures.* Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Landlord was not service with two of the Tenant's photographs, those photos cannot be considered in my decision. I did however consider the remaining evidence and testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however,

each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?
2. Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on July 1, 2013. The Tenant was required to pay rent of $950.00 on the first of each month and in mid July 2013 the Tenant paid $475.00 as the security deposit.

The Tenant testified that sometime near the end of August beginning of September 2013, he began to smell mold or mildew in his media room / bedroom. He informed the Landlord who responded by telling him they had had problems in the past with water leakage but those problems were fixed in the spring, prior to his tenancy. The Tenant monitored the situation and advised the Landlord that the problem continued and he was noticing that the carpet was damp.

The Tenant submitted that he moved all of his bedroom furniture into his living room and he kept trying to get help with the problem but the Landlord was not doing anything. Then in September 2013 he returned home after a period of heavy rain and found his rental unit had been flooded. There were several inches of water throughout his unit and fortunately he found his cat unharmed, but stressed. The Tenant argued that his possessions were damaged from the mold and flood. He said that despite him not having content insurance, he was told that content insurance would not cover damage caused by mold.

The Tenant stated that he rented a storage box, had it delivered to the property October 1, 2014, and had it placed where he was instructed to do so. Then he began loading his possessions inside in a manner that he could access things if required. He started sleeping in his travel trailer that was parked on the property and used the rental unit for cooking and washroom facilities.

The Tenant indicated that the Landlord hired a company to redo the drainage tile and staff from that company provided instruction on where he should have the storage bin placed. Then a few weeks later the Landlord requested that he have the bin moved because the company needed to dig where the bin was located. He said he advised the Landlord that his possessions were loosely stored in the bin and would need to be repacked before the bin could be moved. He had the bin repacked within a week and then had the bin removed from the property on approximately October 22, 2013. Although he resided at the property until the end of October 2013 he did not pay rent for September or October and the Landlord paid him $200.00 as form of some compensation.

The Tenant argued that it was his intention to move back into the rental unit once the repairs were completed; however, he could not reside in his trailer throughout the winter months. Once he had the bin moved he had to pay storage at another location and he also had his trailer moved to his girlfriend's mother's place where he had to pay rent. He continued to wait for repairs to be completed and then in December 2013 the Landlord contacted him and told him that she was not going to have the repairs completed. He said the Landlord requested that he provide her a notice to end the tenancy and the keys and she would leave a cheque for his security deposit in her mailbox. He picked up and cashed the security deposit refund cheque but did not give her a notice to end the tenancy and did not leave her the keys.

The Tenant testified that he did not secure a new residence until January 17, 2014. He indicated that he still has possessions at the rental unit that he would like to pick up. He questioned the affidavit provided in the Landlord's evidence because it was written by the upstairs tenant who is the person who broke into his rental unit and is also the person with whom he had an altercation with.

The Tenant submitted a copy of a letter he wrote to the Landlord dated February 20, 2014, as the evidence to support his claim for compensation of $10,208.49, which includes what he referred to as compensatory damages, $5,445.33 for his personal belongings that were either damaged or sold; plus $4,763.16 for moving and storage costs. He reduced his rent by the September 2013 rent of $950.00 which the Landlord returned; his security deposit of $425.00 that was returned; and $200.00 that was paid to him as compensation by the Landlord.

The Landlord testified and confirmed that there had been a flood and drainage problems at the rental unit. She hired a company to complete the repairs which were very expensive. The costs were increased by $2,500.00 because the Tenant delayed in moving his storage container. The Landlord stated that her spouse passed away and

the costs became so expensive that on approximately December 1, 2013, she informed the Tenant that she would be stopping the repairs. She made arrangements for him to come by and pick up his security deposit and he had agreed to leave her the keys and a notice to end his tenancy. He picked up and cashed the security deposit but he did not leave the keys or the notice. The Landlord confirmed that she did not have any communication with the Tenant after he picked up his security deposit refund and prior to receiving his application for Dispute Resolution.

The Landlord questioned the Tenant's claim and noted that there was no proof provided that damaged items had been replaced. There were no receipts provided to prove the cost of items claimed. She also questioned the amounts claimed for travel or fuel. The Tenant had given her skew numbers off of items he saw at a department store but those are not receipts. The Landlord argued that the Tenant's possessions may have been wet but they were not damaged. As per her evidence, the Tenant sold some of his possessions which were damaged by his cat and not damaged by the flood. The Landlord argued that the living room was never affected by the mold or the flood.

The Landlord submitted evidence which included a description of her claim for $2,906.88. She stated she was seeking to recover the additional $2,500.00 for repairs that were incurred because the repair crew had to come back at a later date to finish the job because the Tenant's storage bin was in the way; $350.00 for the cost to repair her chain link fence that was damaged when the Tenant removed his shed; and $56.88 to replace the kitchen blind which had been cut to open a space to see out the window.

The Tenant denies cutting the window blind and argued that it was bent and damaged when he first moved in. He stated that he had hired a moving company to move his garden shed so if the fence posts where damaged then he would accept responsibility to pay for the posts. He insisted that the fence was not damaged by his movers as he had rolled it up and out of the way.

The Tenant indicated that he wanted to return to the rental property to pick up the remainder of his items but he was concerned that the gate was locked and the upstairs tenant may cause an altercation. After a brief discussion the parties agreed to meet at the rental unit on Saturday June 14, 2014, at approximately 9:00 a.m. to allow the Tenant access to his possessions. The Landlord confirmed that she would speak to the upstairs tenant and make sure that he does not attempt to approach or interact with the Tenant while he attends to remove his possessions. She said she will ensure that the upstairs tenant is not outside while the Tenant is at the property. The Tenant will return the keys to the Landlord, if he can locate them.

Analysis

After careful consideration of the foregoing, the documentary evidence before me, and on a balance of probabilities, I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

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.

Landlord's Application

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Landlord has sought $56.88 for the cost to replace a broken blind for which the Tenant disputed saying it was broken when he first moved in. Therefore, in the absence of a move in and move out condition inspection report form, and in the presence of disputed verbal testimony, I find the Landlord provided insufficient evidence to prove the Tenant breached the Act by not repairing or replacing the damaged blinds. Accordingly, the claim of $56.88 is dismissed, without leave to reapply.

The Landlord claimed $2,500.00 for the cost incurred to have the drainage repairs completed and argued that this cost was the result of the Tenant failing to move his shed. The evidence supports that the Tenant consulted with the repair crew and the upstairs tenant who had been acting on behalf of the Landlord, to determine the placement of the storage bin. It further supports that the Tenant did not refuse to move the shed; rather, the Tenant advised it would take a few days for him to repack his possessions.

While I accept that it would have been less expensive to complete the repairs had the completion not been delayed a few days; there is insufficient evidence to prove the Tenant breached the Act. Furthermore, while it may have cost more to bring the equipment back to the property, the evidence does not clearly indicate how much of the $2,500.00 was for bringing the equipment back and how much was for the actual labour

and materials to complete the job. Accordingly, I find there to be insufficient evidence to support the Landlord's claim for $2,500.00 and it is dismissed, without leave to reapply.

I accept the Landlord's submission that the fence posts were broken and the chain link fence requires re-stretching, at a cost of $350.00, as noted in the written estimate provided in the Landlord's evidence. The Tenant accepted responsibility to repair the posts but argued the fence was not damaged. The quote does not include replacing the fence; rather it includes "re-stretching" it. Accordingly, I grant the Landlord monetary compensation to repair and reattach the fence in the amount of **$350.00.**

The Landlord has only partially succeeded with her application; therefore, I award partial recovery of the filing fee in the amount of **$25.00.**

Tenant's Application

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that repairs were required to the property drainage system and the interior of the basement suite or that a flood occurred in the basement suite in September 2014. As such, I make no findings on the matter of the necessity of the work.

Section 28 of the *Act* states 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 subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the Landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building and building envelope would deteriorate occupant comfort and the long term condition of the building.

Notwithstanding the Landlord's testimony that she initiated repairs in October 2013, it is undeniable that the Tenant suffered a loss of quiet enjoyment for a period of approximately two months (September and October) while he awaited completion of the

repairs. In addition, the Tenant suffered a further loss of quiet enjoyment by having to relocate his storage shed and trailer, even though he intended to move back into the unit. Then at the beginning of December 2013 he was told that the Landlord was not going to finish the repairs and he was to come and pick up his security deposit.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, the amount of rent paid by the Tenant during the repairs, and the length of time over which the situation has existed”.

Based on the above, I find there is no question that the value of the tenancy was significantly reduced during the two month period of September and October when the Tenant continued to reside on the property. That being said, the Tenant did not pay rent for that period and was given additional compensation in the amount of $200.00. Accordingly, I find the Tenant has already been compensated for the loss of quiet enjoyment for September and October 2013, as he resided on the property and was not required to pay rent for this period. Accordingly, I dismiss the compensatory claim made for the period of September and October 2013, without leave to reapply.

There are no provisions in the Act that would allow a Landlord to make a personal choice to not complete required repairs and end a tenancy without notice, regardless of financial or any other reasons. I have also considered that the Tenant made no effort to file an application for dispute resolution back in November to seek assistance in getting the repairs completed sooner or resolving the issues of his tenancy. That being said, I find the Tenant suffered aggravated damages as a result of this tenancy ending, without notice. Accordingly, I award the Tenant an amount equal to one month’s rent **($950.00);**

which is the amount that would have been payable to the Tenant, had the Landlord issued a 2 Month Notice to end tenancy, in accordance with the Act.

The remainder of the Tenant's claim consists of amounts claimed for damaged possessions and moving and storage fees. The Landlord disputed the amounts claimed and argued that she has seen no proof that any possessions were damaged by mold or the flood; there is no evidence, such as receipts, that would prove amounts were paid for storage or moving costs; and the Tenant did not have content insurance. As per the foregoing, I find the Tenant did not mitigate his loss as he failed to have content insurance. Furthermore, there is insufficient evidence to support that the Tenant's possessions were damaged or to prove the amounts being claimed by the Tenant are equal to the amount of any loss. Accordingly, I find the Tenant has provided insufficient evidence to prove this portion of his claim and it is dismissed, without leave to reapply.

Monetary Order – I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenant's Monetary Award	$ 950.00
LESS: Landlord's Award ($350.00 + $25.00)	-375.00
Offset amount due to the Tenant	**$ 575.00**

Conclusion

The Tenant has been awarded a Monetary Order for **$575.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 13, 2014

Residential Tenancy Branch