



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution in which the Landlord claimed monetary compensation from the Tenant for unpaid rent and damage to the rental unit.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on February 24, 2020. The Landlord was represented by his nephew, B.C. In attendance for the Tenant was his older brother, P.G.

Preliminary Matter—Naming of the Tenant's Brother on the Landlord's Application

The Landlord named the Tenant's brother, P.G., as Estate Administrator on the Application for Dispute Resolution.

P.G. advised that the Tenant passed away in November of 2018, without a will, such that no Executor was appointed; further, P.G. advised that to his knowledge, and no one has applied to the court to administer the Tenant's estate.

Residential Tenancy Branch Policy Guideline 10—Service of Documents on a Deceased Person provides that where a party to an application for dispute resolution is deceased, the personal representative of the deceased's estate should be named. The personal representative may be the person named as executor in the deceased's will, or the person who has been *approved by the court* to administer the estate by way of an estate grant.

In this case, the Tenant did not have a will and therefore did not appoint an executor. I accept the testimony of the Tenant's brother, P.G., that to his knowledge no one has

applied to the B.C. Supreme Court for an Estate Grant of Administration pursuant to *Rule 25-3* of the *B.C. Supreme Court Civil Rules*. As such, the Court has not approved an Administrator of the Tenant's estate. As such, and based on the information before me, I find that a personal representative of the deceased's estate cannot be named.

Section 64(3)(c) of the *Residential Tenancy Act* allows me to amend an Application for Dispute Resolution. I find the Tenant's brother, P.G., is not the Estate Administrator of the Tenant's Estate; as such, I amend the Landlord's Application to remove P.G. as a Respondent.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant's Estate?

Background and Evidence

The Landlord's Agent confirmed the Landlord is his uncle. He further confirmed that he was not directly involved with the tenancy. He stated that there was no tenancy agreement, but a "long standing relationship" as the Landlord and Tenant were friends.

The Landlord claimed the Tenant paid rent of \$1,100.00 from April 1, 2010 to March 1, 2014. In April of 2014, the rent was increased to \$1,200.00. Documentary evidence submitted by the Landlord shows payments from the Tenant to the Landlord in the amount of \$1,100.00 and then \$1,200.00 in the year 2014.

The Landlord claimed \$12,000.00 in unpaid rent. The Landlord's Agent stated that the Tenant failed to pay rent from April 2018 to November 2018. The Agent further stated that the Landlord did not take steps to enforce the lack of payment in 2018 as he and the Tenant were friends.

Although the Landlord claimed \$5,800.00 in cleaning, painting and replacement of items in the rental unit, he did not provide any photos or receipts to support this claim. The Landlord's Agent confirmed the Landlord was "not really pursuing" these amounts.

The Tenant passed away on November 15, 2018. He did not have a will and therefore did not name an executor.

The Tenant's brother, P.G. confirmed that while he has assisted in dealing with the rental unit (in terms of cleaning out the Tenant's personal items and cleaning the unit), he did not have regular contact with his brother prior to his passing. He also confirmed he has not applied to the B.C. Supreme Court for an Estate Grant of Administration. P.G. stated that at the time of his death the Tenant had \$15.00 in his bank account, debts to the Canada Revenue Agency and his credit card. He also had limited assets including an older truck and a motorcycle of limited value. P.G. further stated that he did not have his brother's bank statements and found it very surprising if indeed his brother wasn't paying rent as his brother was very honourable and paid his bills on time.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I accept the Landlord's evidence that rent was payable in the amount of \$1,100.00. Documentary evidence provided by the Landlord indicates this amount was paid by the Tenant from April 1, 2010 to March 1, 2014.

The Landlord claimed rent increased to \$1,200.00 in April of 2014. At that time, the allowable rent increase was 2.2%, or in this case, \$24.20. Section 43(1)(c) allows a Landlord to impose a rent increase that is greater than the amount allowed pursuant to the *Residential Tenancy Regulation*, but such agreement must be in *writing*. I was not provided any documentary evidence to support a finding that this Tenant agreed in writing to pay more than the allowable amount. I therefore find the rent was payable in the amount of \$1,100.00 at the time of the Tenant's death.

I accept the Landlord's Agent's testimony that the Tenant failed to pay rent from April 2018 to November 2018. As such, I award the Landlord the sum of \$8,800.00 for unpaid rent.

The Landlord failed to submit any photos of the rental unit to support a finding that the rental unit required cleaning or painting at the end of the tenancy. Further, although the Landlord claimed the Tenant removed the stove exhaust fan and damaged the blinds, stove and refrigerator, the Landlord failed to provide any photos of these items, or documentary evidence to support the replacement cost incurred.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is

appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, a party must provide evidence as to the age of the item. *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* provides a table setting out the useful life of most building elements to determine the depreciated cost of claimed items.

In this case, I was not provided any evidence as to when the rental unit was last painted or the age of the appliances and blinds. I therefore find it possible the rental unit required painting in any event of the tenancy, and the appliances and blinds had reached their useful building life.

In all the circumstances, I find the Landlord has submitted insufficient evidence to support a finding that the Landlord is entitled to compensation from the Tenant for cleaning, repairs and replacement of appliances and blinds. This portion of the Landlord's claim is dismissed.

Conclusion

The Landlord's claim for monetary compensation for unpaid rent is granted in part. The Landlord is granted monetary compensation in the amount of \$8,800.00 representing unpaid rent of \$1,100.00 per month for the months April through November 2018.

The Landlord's claim for monetary compensation for cleaning and repairs to the rental unit is dismissed.

The Landlord is granted a Monetary Order in the amount of \$8,800.00. This Order may be provided to the Tenant's Brother, P.G., and must be served on the Tenant's Estate Administrator at such time as an Administrator is approved by the B.C. Supreme 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: February 25, 2020

Residential Tenancy Branch