



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, RP, OLC, FFT

Introduction

This hearing dealt with the tenant's application, filed on December 20, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$10,000.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order allowing the tenant to reduce rent of \$200.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 49 minutes from 11:00 a.m. to 11:49 a.m.

Both parties confirmed their names and spelling. The landlord's agent provided her email address, and the tenant provided his mailing address for me to send copies of this decision to both parties after this hearing.

The landlord's agent confirmed that the landlord named in this application owns the rental unit. She provided the rental unit address. She said that she had permission to represent the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, both parties separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle the tenant’s monetary application, and they wanted me to make a decision about it. Both parties were given multiple opportunities to settle the tenant’s monetary application and declined to do so.

I cautioned the tenant that if I dismissed his monetary application without leave to reapply, he could receive \$0. The tenant affirmed that he was prepared for the above consequences if that was my decision.

I cautioned the landlord’s agent that if I granted the tenant’s entire monetary application, the landlord could be required to pay the tenant \$10,300.00 total, including the \$100.00 filing fee. The landlord’s agent affirmed that the landlord was prepared for the above consequences if that was my decision.

Preliminary Issues – Service of Documents, Severing, Amendments

The landlord’s agent confirmed receipt of the tenant’s application for dispute resolution hearing package. The tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant’s application and the tenant was duly served with the landlord’s evidence.

Both parties settled the tenant’s application for repairs and an order to comply, at this hearing, as noted below. Both parties were unable to settle the tenant’s application for monetary claims and asked that I make a decision. I initially informed both parties that the tenant’s monetary claims could be severed, as per Rules 2.3 and 6.2 of the RTB *Rules*, and dismissed with leave to reapply, due to the limited hearing time, and the fact that the tenant received an earlier hearing date due to his priority claims for repairs and an order to comply. However, since both parties settled the tenant’s repair and order to

comply claims, we had sufficient time to complete testimony and evidence from both parties, regarding the tenant's monetary claims. Both parties affirmed that they had sufficient time to provide evidence and testimony at this hearing, regarding the tenant's monetary claims, and that they wanted me to make a decision regarding same.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the name of the landlord's agent as the landlord-respondent party and to add the name of the landlord owner. The landlord's agent consented to this amendment during this hearing. The tenant did not object to same. I find no prejudice to either party in making this amendment.

Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute, except for the tenant's monetary claims.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the tenant's monetary claims:

1. The landlord agreed, at his own cost, to have a certified, licensed professional inspect the "box" area at the rental property, identified by the tenant during this hearing, to determine whether repairs are required, by May 2, 2023;
2. The landlord agreed, at his own cost, to have a certified, licensed professional repair the "box" area at the rental property, identified by the tenant during this hearing, if the repairs are recommended by the professional, by May 31, 2023;
3. The landlord agreed, at his own cost, to have a certified, licensed professional complete weatherstripping of the tenant's rental unit windows, by May 2, 2023;
4. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application, except for his monetary claims.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the tenant's monetary claims. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms

are legal, final, binding and enforceable, which settle all aspects of this dispute, except for the tenant's monetary claims.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 49-minute hearing. Both parties were provided with ample time during this hearing to think about, discuss, negotiate, and decide about the above settlement terms.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order allowing him to reduce rent for repairs, services, or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's monetary claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 20, 2016, with the former owner. A written tenancy agreement was signed by the tenant and the former owner. The landlord purchased the rental unit approximately 2 years ago. Monthly rent of \$962.00 is payable on the first day of each month. A security deposit of \$445.00 was paid by the tenant to the former owner, which was transferred to the landlord, who continues to retain it in full. The tenant continues to occupy the rental unit.

The tenant testified regarding the following facts. His rent reduction claim for \$200.00 is for the days that he paid rent in December and he did not have any heat. His monetary claim for \$10,000.00 is because he caught a cold, due to the lack of heat for 4 days. He could not have Christmas dinner with his family, which was of emotional significance to him. It was not taken seriously. He just thought of the \$10,000.00 number to help him move out and to find something to alleviate his problems. If he moves out, he will have

to pay a higher rent somewhere else. He has a disability. He did not provide any documents to prove his monetary claims. He “came up with a number to raise interest in what's happening here.” His moving expenses will cost a lot. He was under “duress.” He had 2 hours of sleep per night for weeks. He was not rational.

The landlord testified regarding the following facts. She disputes the tenant's entire monetary application. In December, the province had a “cold snap.” The city where the rental unit is located had warming centres for people who needed heat. The rental property building is 60 years or older, and the windows are not insulated. The landlord bought the building and did not agree to double pane the windows or do any renovations. The landlord installed new boilers and the heating worked during this time period. There was a burst pipe because of the water drip and freezing temperatures but it was fixed as soon as possible when the landlord found out. The landlord loaned out portable heaters to people in the building who asked for them. The weather was not within the landlord's control. The landlord had maintenance people who went and checked the units in the building. January had severe winter weather as well. The emotional impact to the tenant is a legal issue and the landlord does not agree to pay for this.

Analysis

Rules and Burden of Proof

During this hearing, I informed the tenant that, as the applicant, he had the burden of proof, on a balance of probabilities, to present his submissions, evidence, and documents to prove his monetary claims, in order to obtain a monetary order. The tenant affirmed his understanding of same.

The tenant was provided with an application package from the RTB, including a four-page document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”), when he filed this application.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (my emphasis added):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the***

Residential Tenancy Branch website on submitting evidence at
www.gov.bc.ca/landlordtenant/submit

- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present his application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the tenant failed to properly review and explain his claims, amounts, and evidence submitted in support of his application. The tenant submitted documents, including 5 pages of written letters and statements, but did not explain them in sufficient detail during this hearing.

The tenant did not indicate what provisions of the *Act* he was applying under or how he arrived at the amounts claimed in his application. This hearing lasted 49 minutes, so the tenant had ample time and multiple opportunities to present his application and

respond to the landlord's evidence. I repeatedly asked the tenant if he had any other information or evidence to present, during this hearing.

Findings

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claims. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. **It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.** In order to determine whether compensation is due, the arbitrator may determine whether:*

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

...

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount

*arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question.** For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

The tenant stated the following on the RTB online dispute access site, regarding his claim for a monetary order of \$10,000.00 (other occupant's' apartment number redacted for confidentiality, where indicated):

"Apt [number] HAS BEEN VAPEING MARIJUANA AT ALL HRS CALLED LANDLORD IN JAN. WAS TOLD A NOTICE WAS GIVEN TO TENANT, BUT STILL VAPEING, I MUST PHYSICALLY LEAVE MY APT PRETTY MUCH EVERY 1 1/2-2 HRS WITH FANS RUNNING AND PATIO DOOR WIDE OPEN TO DISAPATE THE STENCH OF THE VAPEING." [sic]

The tenant stated the following in his paper application, regarding his claim for a monetary order of \$10,000.00:

"My drapes smell, my bedding smells the carpets smell"

The tenant stated the following on the RTB online dispute access site, regarding his claim for a rent reduction of \$200.00:

"THERE WAS NO HEAT IN THE BUILDING DURING XMAS FOR FOUR DAYS (4)"

The tenant did not provide sufficient details regarding the above two monetary claims during this hearing. He did not sufficiently explain these claims and monetary amounts, any documents submitted, or other information. He did not provide a monetary order worksheet. He did not indicate what sections of the *Act* that he was applying under.

The tenant did not provide any quotes, estimates, invoices, or receipts to support his monetary claims, contrary to Residential Tenancy Policy Guideline 16 above.

The tenant testified that he came up with monetary amounts on his own and that he did not provide documents to support them. The tenant agreed that he included moving expenses, which he has not yet incurred, since he continues to occupy the rental unit, and indicated he did not intend to move out anytime in the near future.

The tenant had ample time to provide sufficient evidence to support his application, as he filed this application on December 20, 2022, and this hearing occurred on April 25, 2023, over 4 months later.

Therefore, the tenant's application of \$10,000.00 for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and an order allowing the tenant to reduce rent of \$200.00 for repairs, services, or facilities agreed upon but not provided, is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, except the repairs that the landlord agreed to complete, I find that he is not entitled to recover the \$100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply.

Conclusion

I order the landlord to complete the above inspection and repairs by the above deadlines as noted in this decision.

The remainder of the tenant's application is dismissed without leave to reapply.

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 25, 2023

Residential Tenancy Branch