

Court of Queen's Bench of Alberta

Citation: Gaba v Bandali, 2014 ABQB 715

Date: 20141126
Docket: 1401 11099
Registry: Calgary

Between:

Sanjay Gaba

Appellant

- and -

Salina Bandali and Sujad Bandali

Respondents

**Reasons for Decision
of the
Honourable Madam Justice B.E. Romaine**

[1] This is an appeal of an order of a Tenancy Dispute Officer pursuant to Regulation 25 of the *Residential Tenancies Act*. The Respondent landlords did not appear at the appeal.

[2] The Respondent landlords claimed damages from the Appellant tenant arising from repairs required to a condominium apartment as a result of a fire caused by the tenant. The tenant was in the last month of his tenancy. Shortly after the fire, the landlords provided the tenant with a letter from the manager of the condominium corporation indicating that the incident would be covered by the condominium corporation's insurance, but that, as provided by the corporation by-laws, the condominium owner would be responsible for a deductible of \$2,500. The tenant suggested to the landlords that they use the damage deposit of \$1,200 to cover part of this deductible and that he would pay an additional \$1,300 and that would be the end of it. The landlords did not respond to the offer.

[3] Months later, the landlords bought a claim in excess of \$10,000 for rent owing, loss of rent arising from the necessity for repairs and reimbursement of restoration costs.

[4] At the hearing, the landlords were asked by the tenancy dispute officer about the discrepancy between their claim and the deductible of \$2,500 set out in the letter. They testified that, although that was the initial information that they received from the manager, the condominium board kept sending them invoices to pay until they paid \$9,562.03, just under what they then understood was a deductible of \$10,000. The landlords presented no evidence that this was actually the deductible. They advised during the hearing that they were calling a former property manager to give evidence by telephone, but she did not answer the phone, and thus never gave evidence.

[5] The tenant submitted at the hearing that there was insufficient evidence of the amount of the deductible. He also argued that there was insufficient evidence that the landlords had actually paid the amounts that they claimed. The tenancy dispute officer advised the tenant that he wasn't entitled to evidence of the deductible as it was information from a third party.

[6] I find that the officer erred in law in taking this position. The landlords had the burden of proving the amount of the deductible. The evidence presented by them was contradictory, being a letter that described a much lower deductible and their testimony, unsupported by proof of payment or of a higher deductible, that they had paid the amounts claimed.

[7] In addition, one of the landlords testified as follows:

... there were inspectors going in and out of the apartment, and I was told that, we will tell you when the restoration can happen. And initially, I was told that the restoration would happen by the company that they choose, and finally I said, I have to get this place going, and whatever restoration is required, I am willing to do it myself.

[8] This testimony raises the question of whether the landlords paid for the restoration themselves because they were unwilling to wait for the condominium board's insurers to act, giving rise to an issue of mitigation of loss.

[9] Given that the residential tenancy officer erred in law by, in effect, placing the onus of proof with respect to the amount of the deductible on the tenant, the order made on September 12, 2014 is cancelled and the matter is returned to the Dispute Resolution Service for rehearing.

Heard on the 17th day of November, 2014.

Dated at the City of Calgary, Alberta this 25th day of November, 2014.

B.E. Romaine
J.C.Q.B.A.

Appearances:

Sanjay Gaba
for the Self Represented - Appellant