



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RPP, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for an order that the Landlord return personal property or provide compensation in lieu of it. The Tenant also applied for the return of his security deposit and to recover the filing fee for this proceeding.

The Application filed by the Tenant included a roommate who does not appear on the written tenancy agreement. Consequently, the style of cause has been amended to remove the Tenant's roommate as a Tenant.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of his security deposit and if so, how much?

Background and Evidence

This tenancy started on March 17, 2009 and ended on May 16, 2009 when the Landlord changed the locks on the rental unit. Rent was \$750.00 per month. The Tenant paid a security deposit of \$375.00 on March 16, 2009.

The Tenant admitted that he received 2 written warnings and a One Month Notice to End Tenancy dated April 28, 2009 with respect to disturbing other occupants of the rental property. The Tenant and the Landlord came to an agreement that the Tenant would move out at the end of May 2009. The Tenant said that on May 16, 2009 he was arrested (for possession of a banned substance) and detained until the following Monday (May 19, 2009). The Tenant claimed that when he returned to the rental unit on May 19, 2009, he discovered that the locks had been changed and that the Landlord had removed all of his and his roommate's personal possessions and discarded them. The Tenant provided a list of items he claimed that Landlord threw out along with the cost to purchase new ones. The Tenant claimed that all of the items in question were new. The Tenant argued that the Landlord had no right to remove his and his roommate's belongings before the end of the month because he knew they had not been abandoned.

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The Tenant also claimed that the Landlord has failed or refused to return his security deposit. The Tenant said he believed his roommate's mother gave his forwarding address in writing to the Landlord and that he did not give the Landlord authorization to keep the security deposit.

The Landlord admitted to throwing out the Tenant's personal possessions on May 17, 2008. The Landlord argued, however, that the Tenant's and his roommate's belongings had a value of less than \$500.00. The Landlord said that the Tenant's roommate's mother came to the rental unit on May 18, 2009 and removed some of his belongings. The Landlord also said that the Tenant's roommate's mother was given an opportunity to remove any of the furnishings but because they were ripped up (from the police investigation), she did not take any of them and told the Landlord's witness she could keep a small television.

The Landlord's witness claimed that she helped the Landlord remove items from the rental unit and clean it. The Landlord's witness said she did not recall seeing any of the Tenant's electronics in the rental unit and that the Tenant's furniture was "junky." She also claimed that (with the exception of a couple of socks) she did not see any of the Tenant's clothes, sporting equipment or linens. The Landlord's witness said that there were dirty dishes and pots, garbage, dirty towels and odds and ends of dishes. She also claimed that she did not see what the Tenant's roommate's mother removed from the rental unit but that his mother advised her that the rest of the items in the rental unit were junk and that she could keep them. The Landlord's witness said she did not believe the police had removed anything from the rental unit.

The Landlord also claimed that he felt it was in the best interest of the other occupants of the residential property that he not let the Tenant and his roommate return to the rental unit. The Landlord denied that the Tenant gave him his forwarding address in writing.

Analysis

Section 44 of the Act sets out the various ways a tenancy can end. In this case, the Tenant agreed that he would not dispute the One Month Notice and would vacate the rental unit on the effective date of the Notice. I find that there was no authority under the Act or other law for the Landlord to enter the Tenant's rental unit and to take all of his and his roommate's belongings and dispose of them and change the locks while the Tenant was still entitled to possession of the rental unit. This was not a case where the Tenant had abandoned the rental unit. Consequently, I find under s. 7 of the Act that the Landlord is liable to pay compensation to the Tenant.

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Contrary to the Landlord's argument, I find it unlikely that the Tenant's and his roommate's possessions that were disposed of had a value of less than \$500.00. However, there is contradictory evidence from the Landlord's witness that many of the items claimed by the Tenant were not in the rental unit when she entered it. Consequently, I find that there is insufficient evidence to conclude that all of the items set out on the Tenant's list were taken by the Landlord. As a result, I find that a more appropriate remedy is to award the Tenant aggravated damages.

RTB Guideline #16 – Claims in Damages describes “aggravated damages (in part) as follows at p. 3:

“These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering.”

I find that the Landlord's act of locking the Tenant out of the rental unit without going through the appropriate steps to end the tenancy was a serious breach of his right to quiet enjoyment under s. 28 of the Act. I also find that the Landlord's act of disposing of the Tenant's and his roommate's belongings was reckless and undertaken with indifference to the rights of the Tenant and his obligations as a Landlord under the Act. I further find the Tenant suffered significant inconvenience when he was locked out by the Landlord with nowhere to go and with no access to his belongings. Consequently, I find that the Tenant is entitled to compensation for inconvenience and loss of amenities which I assess at **\$3,000.00**.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

I find that there is insufficient evidence that the Landlord received the Tenant's forwarding address in writing. However, I also find that the Tenant did not authorize the Landlord to keep the security deposit and the Landlord has not returned it or made an application for dispute resolution to keep it. Consequently, I order the Landlord to return the Tenant's security deposit of **\$375.00**. As the Tenant has been successful in this matter, I find that he is entitled to recover the **\$100.00** filing fee for this proceeding.



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Conclusion

A monetary order in the amount of **\$3,475.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 28, 2009.

Dispute Resolution Officer