Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

At the beginning of the hearing the Tenant admitted that he also filed a Statement of Claim with respect to this matter in the Supreme Court of British Columbia. The Tenant said that he believed that matter had been discontinued because he had not taken any steps to pursue it. In any event, the Tenant claimed that he wished to pursue his claim under the Act and was aware that once a Decision was rendered on the merits of his application in this matter, he could be barred from pursuing his claim in the Supreme Court of British Columbia.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for damages and if so, how much?

Background and Evidence

Under the Parties' tenancy agreement, the tenancy was supposed to start on December 1, 2006. Rent was $325.00 per month payable in advance on the 1st day of each month and included storage. On or about March 15, 2007, the Landlords served the Tenant with a Notice to End Tenancy. On April 24, 2007, the Landlords were granted an Order of Possession on the grounds that the tenancy had been frustrated. The Order of Possession was to take effect on May 15, 2007. The Tenant applied for a Review of that Decision but it was dismissed on May 15, 2007. The Tenant said he filed a Statement of Claim seeking judicial review of that Decision on May 22, 2007. A Writ of Possession was issued to the Landlords and it was executed by a Bailiff on May 29, 2007.

Tenant's Evidence:

The Tenant said he viewed the rental unit (which was a 20' trailer with an attached cabin) and entered into the tenancy agreement on November 19, 2006). The Tenant said he is physically disabled and therefore when the Landlords asked him if he would

be willing to do some work on the rental property in return for a reduction in rent, he advised them that he could not. The Tenant said he only agreed to watch the rental property (where the Landlords also resided) and look after the Landlords' dog when they were away. The Tenant claimed that the Landlords subsequently became angry with him and threatened to evict him because he could not help them with various chores.

The Tenant said that he could not move his belongings onto the rental property on December 1, 2006 because there had been a severe snow storm and the rental property was inaccessible. The Tenant claimed that the Landlords advised him on December 5, 2006 that the property was accessible. The Tenant said that as a result of being unable to move into the rental unit on December 1, 2006, he had to pay additional rent to his former Landlord (for over holding) and for storage. The Tenant claimed that when he arrived at the rental property on December 6, 2006, his 5th wheel trailer was damaged because the Landlords put it in an inadequate spot designated by them. The Tenant claimed that the 5th wheel trailer also sustained damage when it was removed from the rental property by the Bailiff at the end of the tenancy.

The Tenant said that at the beginning of the tenancy, the Landlords refused to let him use their mail box and as a result he incurred additional expenses to rent out a new mail box and to change his mailing address.

The Tenant also claimed compensation for work he said he performed on the rental property. In particular, the Tenant said that the Landlords demanded that he cut, load and split fire wood for his own use. The Tenant also claimed that the Landlords asked him to check a vapour barrier in the roof of the rental unit and to help repair pot holes.

The Tenant argued that the tenancy was not frustrated but rather the Landlords failed to provide the services and facilities that were negotiated in the tenancy agreement and that they further failed to maintain and repair the rental property. The Tenant said that he was aware that the rental unit was heated with propane and a wood stove prior to signing the tenancy agreement. The Tenant claimed, however, that the wood stove was not certified and was installed improperly (although he said he used in nonetheless). The Tenant also claimed that the propane heating system was unsafe in that there was evidence of a fire from a previous tenant and he did not think it had been inspected or repaired since that time.

The Tenant said that the water tank was also heated by propane and as a result, he did not have hot water during the tenancy and had to shower and do laundry elsewhere. The Tenant also said that from the beginning of the tenancy, the toilet leaked and the Landlord failed or refused to fix it. On or about March 1, 2007, the Tenant said there was a problem with sewage backing up. Consequently, the Landlord had the septic

tank (a 250 gallon steel oil tank) pumped out but because it was in poor condition, it had to be removed. The Landlords were unable to install another septic tank (due to municipal by-laws) so the Landlords rented a portable toilet and supplied a 10 gallon pail into which the grey water (for the sinks and shower) could drain.

In general, the Tenant argued that the rental unit was built without permits and did not meet building Code requirements. The Tenant admitted that he did not check to see if permits had been issued to the Landlords and claimed that a building inspector would not inspect the property despite his request. Consequently, on March 15, 2007 (after he received the Notice to End Tenancy), the Tenant sent a letter to the Landlords demanding that they have the rental unit inspected and make repairs.

As a result, the Tenant claimed compensation for loss of a toilet and sewer services from March 1, 2007 to the end of the tenancy. The Tenant also sought compensation for an injury he said he initially sustained when he slipped on snow and ice at the rental property when moving in. The Tenant argued that he sustained injuries as a result of the Landlords' negligence. The Tenant claimed he incurred out of pocket expenses for medications, travel and hot tub treatments in the total amount of $300.00. In support the Tenant provided an x-ray requisition dated May 11, 2007.

The Tenant sought compensation for his time and travel expenses in connection with disputing the Landlords' Notice to End Tenancy. The Tenant also sought to recover $162.50 that the Landlords' were ordered on April 24, 2007 to pay him in lieu of notice. The Tenant admitted that he received a money order from the Landlords for this amount but later returned it to them when he filed his Statement of Claim asking for Judicial Review. The Tenant claimed that at the same time he gave the Landlords a money order for $325.00 for June 2007 rent but that it has not been returned to him.

The Tenant claimed that once the tenancy ended he had to find temporary accommodations and incurred expenses in moving his 5th wheel trailer, two trucks and personal possessions. The Tenant claimed he incurred further expenses when he had to move all of his belongings again to another location and put many of his belongings in storage. The Tenant further claimed that his belongings had been hastily packed in boxes by the Bailiff and some of the food items were later damaged in storage by rats while others leaked fluids and a newly purchased stereo did not work properly thereafter. The Tenant also claimed that he was not permitted by the Bailiff to remove all of his belongings from the rental property at the end of the tenancy and that items such as a camper stand, plumbing supplies, and so forth were disposed of the Landlords. The Tenant argued that these items had a value of $500.00 and that the Landlords had a duty under the Act to itemize and store them.

The Tenant claimed that prior to this tenancy, he rented accommodations in Coombs, B.C. The Tenant said he had an opportunity to work (as an independent contractor) for a company called PIN.ca (selling websites) in Duncan on condition that he resided in the Duncan area. The Tenant claimed that once the tenancy ended, he tried to locate other accommodations in Duncan but could not find any that he could afford and had to move to Ladysmith. Consequently, the Tenant argued that he could no longer work for this company and lost the opportunity to make income. The Tenant claimed that he had earned $1,400.00 from this employment.

Landlords' Evidence:

The Landlords argued that they should not be responsible for expenses incurred by the Tenant prior to entering into the tenancy agreement and claimed that in any event, the Tenant had provided no proof that he incurred the amounts he claimed. The Landlords also argued that they should not be responsible for the Tenant's moving expenses because he would have had to incur those amounts regardless of where he moved to.

The Landlords said that despite the snow storm in late November 2006, the rental property was cleared by December 1, 2006, however the Tenant did not move in that day because he had no one to help him move his belongings.

The Landlords claimed that when they spoke to the Tenant on November 19, 2006, he agreed to assume some caretaking responsibilities such as yard work, bringing wood to the wood shed and helping the Landlords out as required. The Landlords said they needed help because they were physically disabled. The Landlords also said they offered to charge only $100.00 per month rent but the Tenant said that the rent needed to be $325.00 in order for him to qualify for his disability income. The Landlords said the tenancy agreement did not include the use of their mail box.

The Landlords said that the Tenant viewed the rental unit on November 19, 2006 and knew that it was heated with propane and wood. The Landlords claimed that the propane system was in good working order at the beginning of the tenancy and after the Tenant moved out. In particular, one of the Landlords said that he made repairs to it prior to the tenancy and that it was operating when the Tenant took possession of the rental unit. The Landlords also said their son moved into the rental unit after the tenancy and the propane system was operating properly. The Landlords claimed that the Tenant told them he did not use the propane because he didn't like it.

The Landlords admitted that the septic tank had to be removed in March 2007 but said they rented a portable toilet for the Tenant. The Landlords claimed that the Tenant did

not complain about the rental unit until after they served him with the Notice to End Tenancy.

The Landlords said that the Tenant left nothing of value behind after he was removed by the Bailiff on May 29, 2007 and in support they provided a photograph of the items they claim the Tenant left. The Landlords said that these items were either burned or disposed of. The Landlords argued that they were entitled to enforce the Order of Possession and should not be responsible for the Tenant's decision to move twice after he left the rental property.

The Landlords also argued that there was no evidence that the Tenant lost any employment income and that any evidence he was relying on was unreliable. In particular, the Landlords claimed that a letter from the Tenant's employer regarding projected wages was speculative and not based on any fact.

Analysis

Section 7(1) of the Act says that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 7(2) of the Act says that a landlord or tenant who claims compensation for damage or loss from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Damages and Expenses incurred prior to the tenancy:

Notwithstanding the Tenant's arguments that the tenancy wasn't frustrated, a finding of fact was made to that effect in the Dispute Resolution Officer's decision dated April 24, 2007 and it was not changed on a Review or Judicial Review. RTB Policy Guideline #34 says that "where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract." Furthermore I find that there is insufficient evidence to conclude that the rental unit was not fit for occupation from the 1st day of the tenancy as the Tenant alleged. Consequently, I find that there is no authority for the Tenant's argument that the Landlords should be responsible for reimbursing expenses incurred by him prior to and at the beginning of the tenancy and as a result the following claims are dismissed:

- Advertising and travel expenses of $250;
- Travel to negotiate the tenancy agreement of $150.00;
- Printing and mailing notices of address change of $100.00;

- 5th Wheel moving expenses of $180.00;
- Truck and shed moving expenses of $200.00; and
- Moving expenses for personal effects of $200.00.

The Tenant has the burden of proof to show that the rental property was not ready to be moved into on December 1, 2006 as he alleged. However, given the Parties' contradictory evidence on this point and in the absence of any corroborating evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to satisfy the burden of proof and as result, the Tenant's claims for an over-holding rent of $97.36 and for "incidentals" of $200.00 are dismissed.

In support of his claim for damages to the 5th wheel trailer on moving in the Tenant relied on a letter he gave to the Landlords dated May 18, 2007 listing the alleged damages to the trailer as well as a form letter dated May 18, 2007 requesting a quote for specified repairs. The Tenant also provided an undated photograph of the alleged damaged area of the 5th wheel. I find, however, that this evidence is insufficient to conclude that the damages in question occurred as a result of the Landlords' actions on December 6, 2006. Furthermore, there is no evidence in the form of an estimate, as to what the cost of the repair would be. Consequently, I find that there is insufficient evidence to support this part of the Tenant's claim and it is dismissed.

Damages and Expenses incurred during the tenancy:

I find that there is insufficient evidence that the Tenant sustained a shoulder injury due to the acts or neglect of the Landlords at the beginning of the tenancy. The only evidence provided by the Tenant in support of this injury was a requisition for an x-ray dated almost 5 months later. The Tenant provided no evidence of how the Landlords were negligent and no receipts for medications and other therapies he claimed that he incurred. Consequently, this part of the Tenant's claim is dismissed.

I also find that the Tenant is not entitled to recover $245.00 to rent a mail box and issue new notices of his changed mailing address. In particular, I find that it was not a condition of the tenancy agreement that the Tenant could use the Landlords' mail box and there is nothing in the Act that requires that they provide him with one. Consequently, I find that there is no basis for this part of the Tenant's claim and it is dismissed.

I also find that there is no basis for the Tenant's claim for cutting and moving fire wood as he was responsible for heat (whether it be propane or wood) under the tenancy agreement. Consequently, this part of the Tenant's claim is dismissed. I also find that the Tenant is not entitled to recover compensation for removing a vapour barrier and

assisting the Landlord to fill potholes. Firstly, I find that there was an agreement that the Tenant would help out the Landlords from time to time with odd jobs on the rental property. I am persuaded of this based on the recollection of both of the Landlords and the Tenant's own advertisement wherein he sought rental accommodations where he could offer caretaking services. Secondly, even if there was no agreement to help out as the Tenant claimed, I would find that there was no agreement that the Landlords would reimburse the Tenant for his help with chores. Thirdly, I find that the Tenant did not assist the Landlords in filling potholes. Consequently, these parts of the Tenant's claim are also dismissed.

I find that there *is* sufficient evidence that the Tenant lost the use of the indoor toilet and sewer services for the period March 1, 2007 to May 29, 2007. I also find, however, that the Landlords took reasonable steps in the circumstances to provide the Tenant with a portable toilet, however, I find that their steps to remove the grey water from the rental unit were not reasonable. In particular, I find that a 5 gallon bucket placed near the trailer was inadequate for the Tenant's normal use of the rental unit as living accommodations. Section 27 of the Act says that a Landlord must compensate a Tenant for a loss of the value a service or facility that is essential to the use of the property as living accommodations. In the circumstances, I award the Tenant $100.00 per month for the loss of this facility for a total of **$200.00**.

I find that the Tenant is not entitled to compensation for his time and travel expenses in connection with disputing the Landlords' Notice dated March 15, 2007. The Tenant was unsuccessful in his application on that matter and as a result, there is no basis for awarding him compensation. Consequently, that part of the Tenant's claim is dismissed.

I also find that there is no basis for awarding the Tenant compensation of $162.50 that was already ordered to be paid in the proceedings heard on April 24, 2007. Once a monetary order is issued, the Tenant must enforce the Order through the Provincial (Small Claims) Court of British Columbia. Consequently, that part of the Tenant's claim is dismissed. As there is no dispute by the Landlords that the Tenant is entitled to recover his rent payment of **$325.00** for June 2007, I award the Tenant that amount.

Damages and Expenses incurred after the tenancy ended:

Section 25 of the Regulations to the Act sets out what a Landlords' responsibilities are if a Tenant has abandoned personal property at the end of the tenancy. The Tenant claimed that the Landlords had an obligation under the Regulations to itemize and store the possessions he left behind because they had a value of $500.00. The Landlords claimed that the Tenant only left garbage behind and that it had no value so it was disposed of.

The Tenant has the burden of showing that the belongings he left at the rental property had a value of $500.00. In support of this the Tenant provided 2 receipts for replacing items which totalled $370.93. Both Parties provided photographs of the items left behind by the Tenant. Given the Parties' contradictory evidence on this point and the Tenant's evidence of value, I find that there is insufficient evidence that the Tenant's abandoned items had a value of $500.00 and this part of his claim is dismissed.

The Tenant claimed at the hearing that the jack on his 5th wheel trailer was damaged by the Bailiff when it was removed from the rental property. However, in his submissions, the Tenant claimed that the jack sunk into the mud and was damaged when it was later removed by him. In the circumstances, I find that there is insufficient evidence to conclude that the damage to the jack was caused by the act or neglect of the Landlords' or their agent and as a result, this part of the Tenant's claim is dismissed.

I also find that there is insufficient evidence to support the Tenant's claim for compensation for $150.00 due to the Bailiff improperly packing his possessions. Firstly, the Tenant was served with the Order of Possession almost a month before the Bailiff removed him from the rental property. Consequently, I find that the Tenant knew that he was expected to vacate the rental property by May 15, 2007 and should have taken reasonable steps to pack his belongings. Furthermore, the Tenant has not provided sufficient evidence of damage or loss as he alleged and as a result, this part of his claim is dismissed.

With respect to the balance of the Tenant's claims for compensation for damages after he was removed from the rental property, I reiterate the reasons set out above that "where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract." Furthermore, the Tenant provided no evidence in support of his additional argument that the Writ of Possession executed by the Bailiff on May 29, 2007 was improperly obtained by the Landlords or their counsel. Consequently, the following claims are dismissed:

- Temporary relocation expenses of $120.00;
- 5th Wheel moving expenses of $150.00;
- Moving expenses for 2 trucks and a shed of $200.00;
- Moving expenses for personal effects of $300.00;
- Storage for 18 months of $2,000.00;
- Preparing change of address notices of $100.00;
- Replacing printed matter and stamps due to change of telephone number of $150.00; and
- Loss of income of $20,000.00.

With respect to the Tenant's loss of income claim, I also find it significant that the Tenant's decision to move from his previous accommodations at Coombs was due to his former Landlord's need to use those accommodations for her own use. Furthermore, I find that the Landlords should not be liable for the Tenant's loss of income because he could not find alternative, affordable housing in Duncan. The Tenant's own evidence was that he could not afford housing in Duncan due in part to his need to account for income received above his disability income and other financial commitments (FMEP) that he had.

I also find that the evidence relied on by the Tenant to support this claim is unreliable. The Tenant admitted that he worked for PIN.ca when he lived in Coombs but said it was only to display advertising and to obtain leads for sales whereas the job in Duncan was to make commission sales. I find that there is little distinction between these two jobs performed by the Tenant for this company and the difference was simply in the remuneration.

The e-mail provided by the Tenant's employer set out his opinion that the Tenant could have earned between $7,500.00 and $15,000.00 (in commissions) "over the past few months" if he had had suitable accommodations during the tenancy. However, I find that there is no factual basis to support this opinion and for that reason I find it is unreliable. Furthermore, the Tenant's claim was for a loss of potential income after the tenancy ended because he could not find accommodations in Duncan and not for a loss of income during the tenancy. For all of these reasons, I find that there is no basis for this part of the Tenant's claim for a loss of income.

In summary, I find that the Tenant is entitled to compensation of $200.00 for loss of a service or facility during the tenancy and $325.00 in reimbursement of his June 2007 rent payment. The balance of the Tenant's claim is dismissed without leave to reapply.

Conclusion

A monetary order in the amount of **$525.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: October 23, 2009.

Dispute Resolution Officer