



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, OLC, FF, O

Introduction

This is the Tenant's application for a Monetary Order for compensation for damage or loss; for an order that the Landlord comply with the Act; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matters

Counsel for the Landlord submitted that this tenancy did not fall within the authority of the *Residential Tenancy Act* (the "Act"), and relied on Section 4(c) of the Act. He testified that the Tenant rented one room only in the ground floor of a house, and shared the bathroom, kitchen and common areas with another tenant and the Landlords. The Landlord's counsel testified that the Landlords are the owners of the house.

Section 4(c) of the Act states:

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

The Tenant testified that he rented the ground floor with another tenant and that the Landlords had no right to use the bathroom or kitchen without his consent.

On August 31, 2009, the parties were before a Dispute Resolution Officer on the Landlords' application for an Order of Possession. At that Hearing, the Landlord was provided with an Order of Possession effective September 30, 2009. Therefore, I find that the Landlord has already acceded to jurisdiction, that jurisdiction has already been determined with respect to this tenancy, and that I do have the authority to deal with these matters.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a Monetary Order and if so, in what amount?
- (2) Should the Landlords be ordered to comply with the Act?
- (3) Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

There was no written tenancy agreement with respect to this tenancy. The Tenant lived in the rental unit for approximately 2 years. The tenancy ended on September 30, 2009. The Landlord refunded the security deposit to the Tenant on October 1, 2009.

The Tenant gave the following testimony

The Tenant testified that the Landlord disconnected internet service to his suite on August 13, 2009. He stated that he relied on the internet service, which was included in the rent, for employment purposes. The Tenant stated that the Landlord compensated him for loss of internet services, in the amount of \$60.00 a month for two months, but it was not enough.

The Tenant stated that he was without hot water and adequate heat for the term of the tenancy.

During the last few days of the tenancy, the Tenant testified that the Landlords:

- Harassed the Tenant by jumping on the floor above him at 6:00 a.m. in the morning, causing him to lose sleep;
- Harassed the Tenant by turning on the vacuum cleaner at 8:00 a.m. in the morning, just outside his bedroom door;
- Stopped the Tenant from eating meals by blocking his access to the stove, by unplugging his slow cooker, and by pouring his soup onto the ground; and
- Set up a video camera in the Tenant's home in order to spy on him.

In addition, the Tenant testified that:

- On August 7 and 9, 2009, the male Landlord broke his fan and some table decorations;
- On August 14, 2009, the male Landlord assaulted him and broke his glasses;
- On August 9, 2009, the female Landlord spit in his face.

The Tenant alleged that the Landlords were also stealing his mail. The Tenant stated that Government mail was sent to the Tenant, by registered mail, on August 12, 2009, but the Tenant did not receive it.

The Tenant testified that the basement was his home and that the Landlords never came downstairs until September, 2009, in order to harass him into leaving.

The Tenant asked for a monetary order in the amount of \$25,000.00 for loss of employment, due to disconnecting the internet; pain and suffering; loss of peaceful enjoyment; and for his broken glasses, fan and table decorations.

The male Landlord and his counsel gave the following testimony

The Landlord's counsel testified that the Tenant was storing junk in the basement suite and started bringing in bicycles towards the end of the tenancy. The Landlord was concerned about a fire hazard and installed a video camera on September 27, 2009, and started sleeping in the basement suite in order to ensure the safety of his family, who live upstairs. The Landlord had the other tenant's permission to sleep in his room (the other tenant was absent from the suite at the time). When the Tenant discovered the video camera, the Tenant turned the lens towards the ceiling, so the Landlord could not observe the Tenant.

The male Landlord denied assaulting the Tenant, and denied that his wife spit on the Tenant. The male Landlord denied purposefully breaking the Tenant's possessions, preventing him from eating, or stealing the Tenant's mail. The male Landlord denied stomping on the floors at 6:00 in the morning, or starting the vacuum cleaner at 8:00 in the morning.

The male Landlord stated that the Tenant never mentioned the lack of hot water or heat to the Landlord. There is only one source of heat for the house, which is a forced air furnace with one heat switch. If the Tenant was cold, the Landlords would have been cold, too.

Analysis

This is the Tenant's application and therefore the onus is on the Tenant to prove his monetary claim. The Tenant provided two letters from overseas business, alleging they suffered business losses of \$10,000.00 and \$8,000.00, due to the Tenant not having internet capability. There was no evidence of what the Tenant's compensation would have been for that period of time. The Tenant could have accessed the internet elsewhere. There is insufficient evidence to support his claim against the Landlords for

loss of revenue. The Tenant has already been compensated for loss of internet service.

The Tenant has not provided sufficient evidence to substantiate his claim that the Landlord broke his fan, glasses and table decorations. Neither has he provided documentary evidence with respect to the cost of replacing these items.

The Tenant testified that he asked the Landlord to fix the hot water and to turn up the heat, but provided no documentary evidence (i.e. written notice) to support his claim.

The Landlord admitted to setting up a video camera in the basement suite. This is particularly egregious. The Landlord admitted to taking up temporary residence in the Tenant's suite. I am satisfied that the Tenant has provided sufficient evidence to substantiate his claim for loss of peaceful enjoyment and harassment by the Landlord for a period of several days prior to the end of the tenancy, and award the Tenant a Monetary Order in the amount of \$1,000.00. The Tenant has been partially successful in his application and I find that he is entitled to recover half of the filing fee, in the amount of \$50.00, from the Landlords.

Conclusion

I grant the Tenant a Monetary Order against the Landlords in the amount of \$1,050.00. This Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) 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.

December 15, 2009

Date of Decision