

## **DECISION**

Dispute Codes      MNDC

### Introduction

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

### Issues(s) to be Decided

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

### Background and Evidence

This tenancy started on November 1, 2009. Rent was \$1,050.00 per month payable in advance on the 1<sup>st</sup> day of each month.

In the late afternoon of November 5, 2009, the Tenant's ex-girlfriend (who did not reside with him) attended the rental unit and caused a disturbance. The police attended and removed her from the rental property. The Tenant advised the Landlord's agent (the caretaker) about the incident. Later that evening (around midnight), the Tenant's ex-girlfriend attended the rental unit again and caused a disturbance so that the Tenant again had to contact the police.

The Tenant claims that after the second incident, the Landlord's caretaker approached him, told him he would have to hand over his keys and leave and that he (the caretaker) would be changing the locks on the rental property. The Tenant said he gave the caretaker his keys because he believed he would not have access to the building once the locks were changed. The Tenant said he asked the caretaker if he could move back in a couple of days but was told he could not. The Tenant said he told the caretaker that he had nowhere to go and wasn't willing to leave so the caretaker contacted his mother.

The Tenant's mother claimed that she received a telephone call from the Landlord's caretaker late in the evening of November 5, 2009 and that he told her to come and get the Tenant because he would not be staying there any longer. The Tenant's mother said that when she arrived at the rental property, the Landlord's caretaker said he would be changing the locks on the rental property and was waiting for a locksmith to arrive. The Tenant's mother denied that the police said the Tenant should leave but instead claimed that the police stated that they did not understand why the Landlord wanted to change the locks. The Tenant's mother denied that she or her son agreed that he would leave and claimed they "begged" the caretaker to let the Tenant stay because he had nowhere else to go but the caretaker had already made up his mind. The Tenant's mother said she was leaving the following morning to go to Israel and had arranged to have people stay at her residence while she was away.

Consequently, the Tenant and his mother said they were concerned that if the Landlord evicted the Tenant while his mother was away, he would have nowhere to go and his belongings might be thrown out. As a result, the Tenant asked the Landlord's caretaker for a letter saying he would not throw out the Tenant's belongings until his mother returned at the end of November and could remove them. The Tenant said he contacted the Landlord's caretaker a number of times during the month of November 2009 to gain access to the rental unit to collect his mail, some clothing and to check on things. The Tenant said he asked the owner of the rental property on or about November 25, 2009 if he could continue to stay in the rental unit but was advised that the caretaker did not want him there and as a result, the Tenant removed his belongings on November 30, 2009.

The Landlord's caretaker claimed that he received complaints from other residents of the rental property prior to November 5, 2009 about noise from fighting coming from the Tenant's suite. Consequently, he said he spoke with the Tenant and advised him that he should speak to the owner because he could be evicted if the noise complaints continued. The Landlord's caretaker said he again reminded the Tenant after the 1<sup>st</sup> incident on November 5, 2009 that he could be evicted if there were any more problems. In particular, the Landlord's caretaker said the Tenant's ex-girlfriend was hysterical and screamed and shouted for over an hour until she finally had to be physically removed by the police.

The Landlord's caretaker said he was concerned about the safety of the other residents of the rental property after the two incidents on November 5, 2009. The Landlord's caretaker said the Tenant "offered excuses" why he couldn't stay elsewhere and advised the caretaker to contact his mother. The Tenant's caretaker said he told the Tenant's mother that the Tenant had to stay somewhere else, that he was not evicting the Tenant but trying to solve the problem.

The Landlord's caretaker said he spoke to the Tenant's mother when she arrived at the rental property and told her that if the Tenant stayed somewhere else he would not have to change the locks on the building. The Landlord's caretaker said the Tenant's mother said she would find a place for the Tenant to stay and try to resolve the problem when she returned from overseas. The Landlord's caretaker said he told the Tenant and his mother that they'd have to work something out with the owner of the rental property if the Tenant was going to be allowed to stay after November.

Consequently, the Landlord argued that the Tenant left voluntarily. The Landlord also argued that the letter written by his caretaker and dated November 6, 2009 is evidence of the Tenant's agreement that in exchange for not being evicted, he could store his belongings in the rental unit for that month. The Landlord's caretaker argued that the Tenant never asked for a new arrangement and denied telling the owner that he did not want to Tenant to continue to live there. The Landlord's caretaker also admitted that he did not change the locks on the rental property until after the end of November 2009 even though the Tenant's ex-girlfriend attended the rental property for a 3<sup>rd</sup> time on November 6, 2009 and was arrested for breaking and entering.

## Analysis

I find on a balance of probabilities that the Tenant did not leave the rental unit on the evening of November 5, 2009 voluntarily. There was no evidence to corroborate the Landlord's allegation that the police asked the Tenant to leave. Instead, the Landlord's caretaker said the police advised him that they could not do anything about the Tenant's ex-girlfriend. The Landlord's caretaker also said he believed that as long as the Tenant continued to reside in the rental unit, his ex-girlfriend would continue to be a problem and a possible safety risk for other tenants in the rental property. Consequently, I find that when the Tenant objected to leaving because he said he had nowhere else to go, the Landlord's caretaker told the Tenant that he was changing the locks on the building so that the Tenant would leave.

I further find that the only reason the Tenant left was because he believed that if he was locked out of the rental property he would have nowhere else to go and the Landlord might evict him and remove his belongings. I find that the evidence does not support the Landlord's argument that the caretaker was going to change the locks to keep out the Tenant's ex-girlfriend. The Landlord's caretaker admitted that in order to gain access to the rental unit on November 6, 2009, the Tenant's ex-girlfriend broke a window which indicates that she did not have keys. The Landlord's caretaker also admitted that after this event he still did not change the locks on the rental property until after November 30, 2009 when the Tenant had already moved out. Although he claimed that he delayed because the Tenant's girlfriend was arrested, there was no evidence that she could not attend the property because she was incarcerated.

I also find that there is insufficient evidence to support the Landlord's argument that the letter drafted by the Landlord's caretaker and dated November 6, 2009 shows that the Tenant agreed to leave. That document is not signed by the Tenant and only says that the caretaker agrees not to interfere with the Tenant's belongings until the Tenant could move them on November 30, 2009. Consequently, I find that this document instead supports the Tenant's position that he was concerned about what would happen to his belongings if the Landlord tried to evict him while he was denied access to the building.

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including but not limited to the right to exclusive possession of the rental unit subject only to the Landlord's right to enter in accordance with s. 29 of the Act. By forcing the Tenant to leave the rental property on the evening of November 5, 2009 without an Order of the Residential Tenancy Branch or lawful directive of the police, I find that the Landlord breached a material term of the tenancy agreement. Section 7(1) of the Act says that if a landlord (or tenant) does not comply with the Act or 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 party who claims compensation for damage or loss due to the other party's non-compliance with the Act or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant said that when he was forced to leave the rental property late in the evening of November 5, 2009, the only accommodations he could find were in a motel. The Tenant said he stayed in this hotel at a cost of \$89.00 plus \$13.35 in taxes per night for November 5 – 23, 2009 (19 days @ \$102.35 = \$1,944.65) and then at a cheaper hotel from November 24 – 28 at \$69.00 plus \$10.35 in taxes per night (5 days @ \$79.35 = \$396.75). The Tenant also claimed that because he had no cooking facilities, he had to spend more on meals.

I find that the amount claimed by the Tenant for motel accommodations for the period November 5 – 28 is reasonable and I award the Tenant the amount of **\$2,341.40**. I also find that the Tenant would have spent more to purchase meals than if he were to prepare them himself and as a result, I award him \$25.00 per day (for 24 days) representing the additional amount he would have had to incur for a total of **\$600.00**. I find that the Tenant is not entitled to recover his rent payment for the month of November 2009 as he would have had to incur accommodation expenses in any event and as a result, that part of his claim is dismissed.

### Conclusion

A monetary order in the amount of **\$2,941.40** 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: March 31, 2010.

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Dispute Resolution Officer