

## **DECISION**

**Dispute Codes**      OPT, MNDC, RPP, O  
                                 MNDC, FF

### **Introduction**

This matter dealt with an application by the Tenant for an Order of Possession, for an Order that the Landlord return personal property and for a monetary order for compensation for damage or loss under the Act or tenancy agreement. The Landlord applied for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with a copy of the Application and Notice of Hearing to the address for service set out on the Tenant's application by registered mail on March 24, 2010. Based on the evidence of the Landlord, I find that the Tenant was served as required by s. 89 of the Act with the Landlord's hearing package and the hearing proceeded in the Tenant's absence.

### **Issues(s) to be Decided**

1. Is the Tenant entitled to an Order of Possession?
2. Is the Tenant entitled to compensation for damages?
3. Is the Landlord entitled to compensation for damages?
4. Is the Tenant entitled to an Order requiring the Landlord to return personal possessions?

### **Background and Evidence**

This tenancy started on February 1, 2003. On January 26, 2010, the Landlord was granted an Order of Possession to take effect on January 31, 2010. On February 4, 2010, the Landlord was granted a Writ of Possession in the Supreme Court of British Columbia and on February 9, 2010, a Bailiff removed the Tenant and his belongings from the rental unit.

### **The Tenant's Claim:**

In his application, the Tenant claimed that he was evicted while he was very ill and unable to make sound decisions. Consequently, the Tenant sought an Order of Possession of the rental unit as well as compensation for his living expenses and pet boarding expenses while he had to reside elsewhere. The Tenant also sought the return of a number of knives he claimed that the Landlord held in a storage locker on the rental property. The Tenant did not apply for a Review of the Decision and Order made on January 26, 2010. The Tenant did not attend the hearing to give oral evidence

and did not provide any documentary evidence (other than a list of knives) in support of his claims.

In a written statement dated December 16, 2009, one of the agents for the Landlord (L.S.) claimed that the Tenant told him in mid-December 2009, that 2 weeks earlier the police forcibly removed the Tenant from the rental unit and at the same time removed his knife collection because he became physically aggressive. The Tenant then claimed that someone told him that his knife collection was being stored in a storage room on the rental property. The Landlord denied knowing the whereabouts of the Tenant's knife collection.

#### The Landlord's Claim:

The Landlord claimed that prior to the end of the tenancy, the Tenant exhibited erratic and aggressive behaviour which included removing lead wires from the electrical box in the rental unit. The Landlord said that this caused the fire alarms in the building to go off and alerted the fire department. The Landlord also said that the fire department would not restore electricity to the rental unit until the electrical box was repaired and inspected. Consequently, the Landlord said he incurred an expenses to hire an electrician repair the electric box.

The Landlord also claimed that as a result of the Tenant's behaviour, other residents of the rental property were concerned about their safety. Consequently, the Landlord said he incurred expenses to hire security personnel to make night patrols of the rental property until such time as the Tenant could be removed from the rental property. Thereafter the Landlord said he incurred an expense to re-key the front door of the building and to make new keys for all of the other residents.

The Landlord further claimed that he incurred expenses to obtain a Writ of Possession, to hire a Bailiff to enforce the Writ and to store the Tenant's belongings that were removed by the Bailiff. The Landlord said that although the Tenant was given a key to the storage locker on the day he was removed from the rental property, he has not removed the majority of his belongings from the storage locker.

The Landlord also sought expenses to have a Bailiff serve the Tenant with a copy of the hearing package for the January 26, 2010 hearing.

#### Analysis

##### The Tenant's Claim:

Where a Party disputes a Decision or Order for reasons such as those that the Tenant has raised in this matter, the Act requires that the Party **must** first apply for a Review of the Decision or Order under s. 84 of the Act. I find that the Tenant has not applied for a Review of the Decision and Order made on January 26, 2010 and as a result, he is

barred by the legal principle of *res judicata* from having the matter heard on its merits a second time. Consequently, the Tenant's application for an Order of Possession of the rental unit is dismissed without leave to reapply.

Section 7(1) of the Act says that a Party who suffers damage or loss as a result of another Party's breach of the Act or tenancy agreement may make a claim for compensation. In this case however, there is no evidence that the Landlord has breached the Act or tenancy agreement by enforcing an Order of Possession that was granted to him on January 26, 2010. As a result, the Tenant's claims for compensation for living expenses and pet boarding expenses are dismissed without leave to reapply.

With respect to the Tenant's claim for the return of his knives, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlord has those items in his possession and that they were not abandoned as defined under s. 24 of the Regulations to the Act. In the absence of any corroborating evidence to support the Tenant's claim and given the contradictory evidence of the Landlord, I find that the Tenant has not provided sufficient evidence to show that Landlord has his knives and that part of his claim is also dismissed without leave to reapply.

#### The Landlord's Claim:

Given that the Tenant did not apply for a Review of the Decision and Order made on January 26, 2010, I find that the Landlord was entitled to enforce the Order of Possession and is therefore entitled to his reasonable costs of doing so. As a result, I find that the Landlord is entitled to recover his expenses for obtaining a Writ of Possession and of hiring a Bailiff to enforce the Writ. I also find that the Landlord is entitled to recover reasonable storage expenses as claimed.

Section 32 of the Act says that a Tenant is responsible for the cost of repairing any damages caused by his act or neglect. In the absence of any evidence from the Tenant to the contrary, I also find that the Tenant damaged an electrical box in the rental unit and that as a result, the Landlord is entitled to recover expenses to repair that damage.

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to freedom from unreasonable disturbance and the use of common areas for reasonable and lawful purposes free from significant interference. As a result of this material term which is included in every residential tenancy agreement, a Landlord has an obligation to ensure that all tenants of a rental property are reasonably safe and secure and not subject to interference by another tenant. In the absence of any evidence from the Tenant to the contrary, I find that the Landlord took reasonable steps to ensure that other tenants in the rental property were safe from any malicious acts of the Tenant by hiring security personnel to patrol common areas and by changing the locks of the main door once the tenancy ended. Consequently, I find that the Landlord is entitled to recover expenses for security personnel and re-keying the main door lock.

Section 7(2) requires that a Party who suffers damage or loss must take reasonable steps to mitigate their losses. I find that the Landlord's claim to recover expenses to have a Bailiff serve the Tenant with his hearing package for the January 26, 2010 hearing is unreasonable. In particular, there was no evidence as to why a Bailiff had to serve the Tenant as opposed to an employee or agent of the Landlord. Furthermore, personal service was likely unnecessary given that the Tenant accepted service of the Landlord's hearing package sent by registered mail. Consequently this part of the Landlord's claim is dismissed without leave to reapply.

As the Landlord has been successful in this matter, he is entitled to recover the \$50.00 filing fee for this proceeding. In summary, I find that the Landlord has made out a claim as follows:

Electrical Repairs:	\$271.68
Security Expenses:	\$1,155.00
Writ of Possession:	\$111.00
Bailiff Fees:	\$1,482.82
Storage Expenses:	\$431.55
Re-Keying Expenses:	\$547.76
Filing Fee:	<u>\$50.00</u>
TOTAL:	\$4,049.81

### **Conclusion**

The Tenant's application is dismissed without leave to reapply. A Monetary Order in the amount of **\$4,049.81** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: April 12, 2010.

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Dispute Resolution Officer