

Decision

Dispute Codes: MNR, MND, MNDC, RPP, FF

Introduction

This hearing dealt with two applications:

- i) by the landlord for a monetary order as compensation for unpaid rent; compensation for damage to the unit, site or property; and compensation for damage or loss under the Act, regulation or tenancy agreement.
- ii) ii) by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement; an order instructing the landlord to return personal property; and recovery of the filing fee.

Previous hearings have held in regard to the on-going dispute between these parties. The most recent hearing to have taken place before the current hearing(s), was held on June 11, 2008, and a decision was issued by that same date. In the result, the landlord was awarded \$160.00 in cleaning costs and his application for compensation for damages was dismissed. The tenant was awarded monetary compensation for “the loss of his goods” in the amount of \$1,500.00. Offsetting the award to the tenant with the award to the landlord, a monetary order was issued in favour of the tenant in the amount of \$1,340.00 (\$1,500.00 - \$160.00).

Thereafter, the tenant applied for a judicial review. By way of judgment dated November 23, 2009, the dispute resolution officer’s decision of June 11, 2008 was set aside, and the dispute was remitted to the residential tenancy branch for rehearing. In part, the judgment states:

[the tenant] had not abandoned his property, thus the statutory obligations of the Landlord under s.25(1) in relation to abandoned goods did not apply to the facts of this case. It follows that the Dispute Resolution Officer’s decision to award damages based on the Landlord’s breach of those regulations was a decision

based on irrelevant factors; the decision is, therefore, a patently unreasonable one.

The rehearing was scheduled to commence by way of telephone conference call on April 20, 2010, and both parties attended. However, arising from difficulty communicating with the parties over the telephone, I adjourned the hearing and the dispute was rescheduled for a face-to-face hearing at the Residential Tenancy Branch in Burnaby on June 17, 2010. Both parties and their witnesses attended and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

A written tenancy agreement is not in evidence for the tenancy which began more than 25 years ago. The landlord states that when the tenancy began, monthly rent was \$200.00 and the security deposit collected near the outset of tenancy amounted to \$100.00. Towards the end of tenancy, rent of \$700.00 was payable in advance on the first day of each month.

The decision dated June 11, 2008 which is the subject of the judicial review, falls between decisions arising from two other hearings, one pre-dates the subject decision, while the other follows thereafter.

The earlier decision is dated February 8, 2008. In the result, an order of possession was issued in favour of the landlord, effective 48 hours after service on the tenant. Further, a monetary order was issued in favour of the landlord for \$600.00; this was comprised of \$200.00 in overdue rent for December 2007, \$350.00 in overdue rent for the first half of February 2008, plus the \$50.00 filing fee.

Following the subject decision of June 11, 2008, a decision was issued on November 20, 2008. In the result, the landlord's application for a monetary order as compensation for unpaid rent, storage fees and recovery of the filing fee was dismissed. As for the tenant, a monetary order was issued in his favour for \$1,302.25; this was comprised of a security deposit of \$350.00, interest of \$902.25, and the \$50.00 filing fee.

As noted earlier, the order of possession issued in favour of the landlord on February 8, 2008, required the tenant to vacate the unit "within 48 hours of service." It is understood that the order was posted on the tenant's door on February 13, 2008. When the tenant did not vacate the unit, the landlord obtained a writ of possession from the supreme court dated February 20, 2008, and subsequently served the writ on the tenant by posting it on the unit door on February 18, 2008.

The landlord appears to have decided that he would employ a bailiff to enforce the writ only if the tenant was present in his unit, but remove the tenant's belongings himself if the tenant was not present. In the absence of the tenant on February 22, 2008, with the assistance of others the landlord removed the tenant's belongings from his unit and put them in a locked storage area in the building. The landlord and his witnesses testified that they did not dispose of any of the tenant's possessions. Various, the tenant's belongings were stored either as is, in boxes or in bags.

The tenant claims he was a hospital inpatient for a period of approximately 48 hours from February 21 to 23, 2009. When he returned to the unit on February 23, 2008, he was upset to find that all of his possessions had been removed. Thereafter, the tenant contacted the landlord and they agreed to meet on March 3, 2008, so the tenant could claim all his belongings. At that time the tenant, with help from the landlord, removed the belongings from storage and transferred them to an area in the building's locked underground parking area. Over the course of the next several days, the tenant removed his belongings from the parking area with assistance from another.

Subsequently, the parties applied for dispute resolution and a hearing to consider the cross applications took place on June 11, 2008. The broad aspects of the respective applications as set out in the decision dated June 11, 2008 are as follows:

Landlord:

\$2,847.02: **i)** \$350.00 (unpaid rent); **ii)** \$100.00 (moving fee); **iii)** \$160.00 (cleaning); **iv)** \$2237.02 (repairs to damage).

Tenant:

\$24,974.00: **i)** \$24,874.00 (value of missing items); **ii)** \$100.00 (filing fee).

Analysis

Based on the documentary evidence and testimony of the parties, I find that the landlord has provided insufficient evidence of entitlement to unpaid rent that has not already been decided. Further, I find that the landlord has not proven on a balance of probabilities that repairs and painting required in the unit after the end of tenancy were in excess of what would be required from normal wear and tear following a lengthy tenancy. However, on the basis of photographs taken of the inside of the unit and a receipt, I find that the landlord has established entitlement to cleaning costs in the amount of \$160.00.

As for the tenant's application, I find there is simply insufficient evidence to persuade me that the items listed on the tenant's inventory were in the tenant's possession, let alone disposed of by the landlord. I prefer the testimony of the landlord and his witnesses that all possessions removed from the tenant's unit were put into locked storage. I find it most likely that items of greatest value were removed by the tenant immediately after he was given access by the landlord on March 3, 2008.

Further to creating an inventory, the tenant has not proven that he actually owned any of the items listed. He has provided no receipts for purchase, no information related to the age or condition of any items, no photographs, no witness testimony or sworn

affidavits confirming ownership, and no witness testimony or sworn affidavits to support the claim that anything was disposed of by the landlord. Indeed, photographic evidence of the tenant's belongings is limited to pictures taken of the unit by the landlord prior to anything apparently being removed. The photographs show a disheveled environment.

While I find that the tenant has not proven he suffered the loss claimed, I find that by the landlord's personal removal of the tenant's possessions the tenant suffered a loss of comfort arising from his uncertainty as to the disposition of his belongings. While I am persuaded that the landlord's removal and storage of the tenant's belongings were not actions undertaken intentionally in order to create stress for the tenant, I also find that the tenant's feelings of uncertainty and discomfort would likely have been minimized had the landlord employed the services of a bailiff. In this regard I find that the tenant has established entitlement to nominal damages in the amount equal to the value of the monetary compensation awarded to the landlord, as above, of \$160.00.

In the result, as the monetary entitlements established by each of the parties are equal and effectively cancel each other out, I decline to issue monetary orders. Finally, I hereby dismiss the respective applications to recover the filing fee.

Conclusion

The monetary entitlements established by the parties are equal and, therefore, cancel each other out.

The applications to recover the filing fee are hereby dismissed.

DATE: July 9, 2010

Dispute Resolution Officer