Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OPT, AAT, RPP, MNDC, MNSD, FF

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, for the return of a security deposit and to recover the filing fee for this proceeding. At the beginning of the hearing, the Tenant withdrew her applications to cancel a Notice to End Tenancy for Landlord's Use of Property, for an Order of Possession, for access to the rental unit, and for the return of personal property.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 6, 2010 and that the Landlord received it on August 9, 2010. The Tenant said she also served the Landlord by registered mail on September 9, 2010 with a copy of her amended Application but the Landlord refused service of it. Section 90 of the Act deems a document delivered by mail to be received by the recipient 5 days later even if the recipient refuses to accept the mail. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package and amended Application as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of her security deposit?

Background and Evidence

This tenancy started on May 1, 2010. Rent was $360.00 per month. The Tenant paid a security deposit of $175.00 at the beginning of the tenancy. The Tenant said she shared accommodations with the Landlord (who signed a year lease with the owner of the rental property).

The Tenant said that on July 1, 2010 she received a handwritten letter from the Landlord advising her that she would have to move out no later than August 1, 2010. In a separate letter e-mailed to the Tenant the same day, the Landlord explained that she was ending the tenancy due to personal differences with the Tenant and because she wanted the Tenant's room for her daughter. The Tenant said she advised the Landlord

in writing that she had to give her a proper 2 month Notice to end the tenancy but the Landlord claimed she was not required to because she was not a Landlord.

The Tenant said she received a text message from the Landlord on August 2, 2010 (while she was at work) advising the Tenant that the Landlord had changed the locks on the rental unit and moved her belongings to the garage. The Landlord further advised the Tenant that if she did not remove her belongings from the garage by August 6, that she would throw them out.

The Tenant said that as a result of the Landlord's actions, she lost 18 hours of employment income in order to pick up her belongings (including diabetic medications), find storage and look for other accommodations. The Tenant said she has not been able to find new accommodations and is currently living with a family member rent-free however she has incurred additional expenses for storing her belongings.

The Tenant said she asked the Landlord to return her security deposit but the Landlord refused to do so. The Tenant said the Landlord received her mailing address on her Application for Dispute Resolution.

Analysis

Section 1 of the Act defines a Landlord (in part) as "a person other than a tenant *occupying* the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or the Act in relation to the rental unit." Based on the Tenant's evidence that she paid rent to the Landlord who was the sole Tenant named on a written lease for the rental unit (and therefore entitled to possession of it) and who was solely responsible for paying the rent, I find that the Landlord is properly named as a "Landlord" in these proceedings.

Section 44 of the Act sets out the *only* ways in which a tenancy can "legally" end. For example, the Landlord may give a Tenant a 10 Day Notice if the Tenant does not pay rent on time, a One Month Notice if the Tenant has unreasonably disturbed the Landlord (for example) or a Two Month Notice if the Landlord requires the rental unit for her own use.

Section 52 of the Act says that a Notice to End Tenancy when given by a Landlord must be in the approved form. I find that the Landlord's written letter dated July 1, 2010 is not an enforceable notice because it is not on an approved form. I also find that the Landlord knew or should have known that this was the case given that the Tenant brought it to her attention shortly after the Tenant received the letter. Consequently, I find that when the Landlord unilaterally ended the tenancy by changing the locks and

removing the Tenant's possessions, she did so with no authority under the Act in contravention of s. 44 the Act.

Section 7(1) of the Act says that if a Landlord or Tenant does not comply with the Act, the non-complying party must compensate the other for damage or loss that results. I find that the Tenant has established that she lost employment income of **$196.91** and incurred storage expenses of **$273.80** as a result of the Landlord illegally ending the tenancy.

The Tenant also sought to recover one month's compensation as a result of the Landlord giving her the written Notice. Section 51 of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property is entitled to withhold their last month's rent or if they move out earlier, to compensation equivalent to one month's rent. However, as indicated above, I find that the Landlord did not serve the Tenant with an enforceable 2 Month Notice and therefore I find that the Tenant is not entitled to one month's compensation under s. 51 of the Act.

However I find that the Tenant is entitled to aggravated damages. RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

In denying the Tenant access to the rental unit, removing the Tenant's belongings and threatening to throw them out, I find that the Landlord not only acted contrary to the Act but also acted in a high-hand manner and indifferent to the inconvenience, loss and mental distress she caused the Tenant. Consequently, I find that the Tenant is entitled to compensation of **$720.00** which is equivalent to 2 months rent for the 2 month's notice that she should have received from the Landlord.

The Tenant also sought to recover the security deposit. Section 38 of the Act says that a Landlord's obligation to return a security deposit only arises 15 days after the date the tenancy ends or the date the Tenant gives her forwarding address in writing (whichever is later). The Tenant said the Landlord received her forwarding address in writing on August 9, 2010 because her Application for Dispute Resolution shows her mailing address. I find however, that this is not sufficient for the purposes of s. 38 of the Act because the address on the Dispute Resolution Application is for the purposes of serving documents only. Consequently, the Tenant must first provide the Landlord with her forwarding address in writing with a request that the Landlord return the security

deposit to her. If the Landlord does not return the Tenant's deposit within 15 days (or make an application for dispute resolution to make a claim against it), then the Tenant will be entitled to make a further application to recover double the amount of the security deposit from the Landlord pursuant to s. 38(6) of the Act.

As the Tenant has been successful in this matter, I find that she is also entitled pursuant to s. 72 of the Act to recover from the Landlord the **$50.00** filing fee for this proceeding.

Conclusion

The Tenant's application for the return of a security deposit is dismissed with leave to reapply. A Monetary Order in the amount of **$1,240.71** 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: September 20, 2010.

Dispute Resolution Officer