



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC

MNSD

Introduction

This is the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement; and for return of the security deposit from the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Due to the nature of the Tenant's application, this Hearing was scheduled as quickly as possible. The Tenant filed his Application for Dispute Resolution on September 29, 2010. He was advised that he would have to serve the Landlord with the Notice of Dispute documents within 3 days of filing his Application and would have to provide the Landlord with any evidence upon which he would rely by October 4, 2010, at the latest.

The Tenant testified that he served the Landlord with the Notice of Hearing documents on October 1, 2010, in person at the Landlord's home, with a witness present.

I am satisfied that the Landlord was served with the Notice of Hearing documents, pursuant to the provisions of Section 89(1)(c) of the Act.

The Tenant stated that he attempted to serve the Landlord with his evidence package, by personal service on October 4, 2010. He stated that the lights were on at the Landlord's house, but he would not answer the door. The Tenant testified he called the Landlord on his cell phone and there was no answer. The Tenant stated that he had called the Police to advise them that he was going to serve the Landlord with papers. The Tenant believed that the Landlord was avoiding service, and so he posted the documents to the Landlord's door on October 4, 2010 at 10:30 a.m.

The Landlord's agent stated that the Landlord did not receive the Tenant's evidence until October 7, 2010, which is three days after the documents were posted to the Landlord's door. Section 90 of the Act deems documents served in this manner to be served three days after posting.

Pursuant to the provisions of Section 71(2)(b) of the Act, I find that the Landlord was sufficiently served with the Tenant's evidence package for the purpose of this Hearing.

Issue(s) to be Decided

- (1) Was there a tenancy agreement in place between the parties?
- (2) Is the Tenant entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

Tenant's evidence

The Tenant found the advertisement for the rental property on Craig's List. On August 21, 2010, he met with the Landlord at the rental unit and viewed the suite. The Landlord told him rent was \$1,350.00 per month, and that he required a security deposit in the amount of \$675.00.

The rental unit is a suite on the ground floor of a house. The Landlord lives in the suite above the Tenant.

On August 23, 2010, the Tenant provided the Landlord with a security deposit in the amount of \$675.00, and \$700.00 towards the first month's rent, in cash. The Tenant did not get a receipt for the cash payment. The Landlord gave him a key to the rental unit. The Tenant moved into the rental unit on September 1, 2010. The Tenant paid a further \$300.00 to the Landlord on September 3, 2010, leaving a balance owing of \$350.00 for September's rent.

The Landlord went on holidays on September 11, 2010. Before he left, the parties signed a tenancy agreement. The Landlord told the Tenant that he could get a copy of the tenancy agreement after the Landlord returned, but the Tenant has not received a copy of the tenancy agreement. The Landlord agreed that the Tenant could pay the remainder of the rent to the Landlord's partner.

The Landlord returned from holidays on September 23, 2010. The Tenant had not paid the balance owing on September's rent and the Landlord was very upset. The Tenant advised the Landlord that he could pay the remainder of September's rent on September 29, 2010, and that he would be one week late with October's rent.

On September 24, 2010 at 10:30 a.m., the Landlord came to the Tenant's door with his partner and the Landlord's brother and asked to inspect the suite. The Landlord asked for the Tenant's keys and removed the key to the rental unit from the Tenant's keychain, returning the remaining keys to the Tenant. The Landlord told the Tenant to use the alarm code to gain access to the suite and said the Tenant he could have his key back when he paid the rent. The Tenant left at 11:00 a.m.

Later in the afternoon, on September 24, 2010, the Landlord told the Tenant that the Landlord was not the owner of the property, and that the Landlord was renting from a drug dealer. The Landlord told the Tenant that the drug dealer took the Tenant's key

and changed the alarm code. The Landlord told the Tenant that the drug dealer would be removing the Tenant's property from the rental unit. The Tenant went to stay with his mother that evening.

The Tenant returned to the rental unit on September 25, 2010, and discovered that sometime between 8:00 p.m., September 24, 2010 and 2:30 a.m., September 25, 2010, all of the Tenant's possessions had been moved outside to the driveway.

The Tenant called the police, who told the Tenant to go to the Residential Tenancy Branch. The Landlord then told the Tenant that he was actually the owner of the rental property.

The Tenant testified that on October 2, 2010, he noticed that all of his possessions had disappeared from the rental property. The Tenant discovered that his belongings were now stored outside in another location, and were not stored safely, under cover.

The Tenant seeks compensation for damage or loss, as follows:

Compensation in the equivalent of 2 month's rent	\$2,700.00
Return of security deposit	\$675.00
Moving expenses	\$700.00
Cost of replacing household items and personal effects	\$11,000.00
TOTAL MONETARY CLAIM	\$15,075.00

Landlord's agent's evidence

The Landlord's agent testified that there was no tenancy agreement between the Tenant and the Landlord, and that no money exchanged hands. She specifically denied that the Tenant had paid cash to the Landlord for a security deposit or for partial payment for rent for the month of September.

The Landlord's agent testified that the Landlord was out of the country from September 6, 2010 to September 23, 2010, and he returned to find the Tenant in the suite without the Landlord's permission. She testified that the Landlord phoned the Police, and the Police told the Landlord he could remove the Tenant's belongings and place them outside.

The Landlord's agent could not answer several questions that were asked of her, and requested an adjournment so that the Landlord could seek legal advice.

Analysis

It is important to note that the Landlord provided written permission for his agent to appear at the Hearing, and to act as his agent. At the outset of the Hearing, I specifically asked the Landlord's agent if she had the knowledge required to answer questions and give testimony with respect to the tenancy. She replied that it wasn't a tenancy. When I rephrased the question, and asked the Landlord's agent if she had sufficient knowledge to answer questions and to give testimony on behalf of the Respondent, she replied that she did. Based on the Landlord's letter of authorization and the Landlord's agent's assurance that she could fully represent the Landlord, I accepted that the Landlord's agent was acting as his agent.

The Landlord's agent listened to the Tenant's submissions and at the end of the Hearing, when she found she could not provide testimony with respect to some of my questions, she asked for an adjournment. I denied the Landlord's agent's request for an adjournment.

The Tenant provided several documents in evidence to support his application, including:

- A printout of his cell phone records for August 21 to September 3, 2010, indicating 11 telephone calls were made to the Landlord's phone number.

- A copy of a bank transaction printout, indicating a cash withdrawal in the amount of \$1,500.00 on August 23, 2010. The Tenant testified that he kept some of the cash for pocket money and paid the rest to the Landlord for the security deposit and partial payment of the rent.
- Copy of a receipt from a local moving van rental company, indicating the Tenant had rented a moving truck on August 31, 2010, and returned it on September 1, 2010. The invoice is made out to the Tenant and indicates the rental unit as the Tenant's address.
- A copy of a letter from a Probation Officer attesting that the Tenant had provided the rental unit's address to the Probation Officer. The Tenant testified that he was reporting to a Probation Officer because he was on a Conditional Discharge and that if he did not provide a current address to the Probation Officer, he would be in danger of breaching his conditions of release and could be arrested.

Throughout the Hearing, the Tenant was forthcoming, candid and believable in his testimony. He did not attempt to hide the fact that he was reporting to a Probation Officer, or that he had not paid the total amount of rent due for the month of September.

The Landlord's agent's testimony lacked veracity. She testified that the Tenant made phone calls to the Landlord because the rental unit was advertised on Craig's List, and the Tenant was making enquiries. I find this unbelievable. The Tenant made a total of 11 phone calls to the Landlord from August 21 to September 3, 2010.

The Tenant provided a bank statement indicating that he withdrew \$1,500.00 in cash from his bank on August 23, 2010, which is the same day the Tenant alleged he paid the Landlord the security deposit and part of the rent. I find on the balance of probabilities that the Tenant did pay the Landlord a security deposit in the amount of \$675.00 and partial rent in the amount of \$700.00 on August 23, 2010.

The Landlord's agent stated that the Landlord was away from September 6 to September 23, 2010. The Tenant testified that the Landlord was away from September 11, 2010 to September 23, 2010. In any event, the invoice from the rental company clearly shows that the Tenant rented a moving truck on September 1, 2010. The Landlord's agent suggested that the Tenant gave the rental unit's address to the moving company, but did not move into the rental unit. She suggested that the Tenant moved his belongings elsewhere on August 31/ September 1, and then snuck into the rental unit after the Landlord left the country on September 6, 2010. The Landlord's agent did not have a reasonable explanation for why the Tenant would rent a truck for August 31-September 1, 2010, if he did not move into the rental unit on September 1, 2010. I find on the balance of probabilities that the Tenant moved into the rental unit on September 1, 2010.

If the Tenant moved into the rental unit on September 1, 2010, I find it highly unlikely that the Landlord (who lived at the same address) did not notice there was someone living in the basement suite.

Was there a tenancy agreement in place between the parties?

The Act defines a "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

The Act defines a "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Having found that the Tenant paid rent to the Landlord and provided the Landlord with a security deposit, I find that the Landlord is a landlord, by definition, and that there is a tenancy agreement in place between the parties.

Is the Tenant entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

It is against the law for a landlord to evict a Tenant without an Order of Possession or to seize a tenant's personal property without a Court Order. I find that the Landlord illegally evicted the Tenant from the rental unit, and illegally seized the Tenant's personal property.

The Landlord provided a written statement and photographs in evidence. In his written statement, the Landlord states that on September 28 and 29, a bear was seen

rummaging through the Tenant's possessions. He states that the Police gave him authorization to remove the Tenant's possessions from the rental unit and place them outside. I do not believe that the Police gave their permission for the Landlord to remove the Tenant's possessions from the rental unit, because it is against the law to do so. As a result of the Landlord's illegal act, the Tenant's possessions were left in the rain and were subject to further damage caused by bears. When the Landlord moved the possessions to another location, they were still left out in the open and exposed to the elements.

The photographs entered in evidence by the Landlord show that the Tenant's possessions included bedroom furniture and mattresses (the Tenant had joint custody of his son), childrens' games and toys, clothing, bedding; kitchen utensils; dining room furniture; living room furniture; and other household items. I find that the Tenant's claim for loss of these items, in the amount of \$11,000.00, is a reasonable amount and allow the Tenant this portion of his monetary claim.

The Tenant provided a copy of an invoice indicating that the Tenant paid \$88.01 to rent a moving van when he moved into the rental unit. I allow the Tenant's proven moving expenses in this amount.

I find that the Tenant is entitled to return of his security deposit in the amount of \$675.00, together with compensation for loss of peaceful enjoyment and illegal eviction by the Landlord in the amount equivalent to two month's rent.

The Tenant has established a monetary award, calculated as follows:

Compensation for loss of Tenant's furniture and household effects	\$11,000.00
Compensation for illegal eviction	\$2,700.00
Cost of hiring moving van	\$88.01
Return of security deposit	<u>\$675.00</u>
Total monetary award	\$14,463.01

Conclusion

I grant the Tenant a monetary order for \$14,463.01 against the Landlord. This order must be served on the Landlord 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*.

Dated: October 13, 2010.
