



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OLC, RPP, LRE, MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement related to an alleged illegal eviction. At the beginning of the hearing, the Tenant abandoned her application to cancel a Notice to End Tenancy for unpaid rent, for an Order that the Landlord return personal property and for an Order prohibiting or placing restrictions on the Landlord's right to enter the rental unit.

The Landlord filed a "cross application" for a monetary order that was scheduled to be heard at the same time as the Tenant's application however, I find that the relief claimed in that application (for unpaid rent and cleaning expenses) is not related to the relief sought in the Tenant's application. Furthermore, there was insufficient time to deal with both applications during the hearing and for that reason the Landlord's application was severed from this proceeding and it is reconvened for hearing on **November 24, 2010 at 9:00 a.m.**

Issues(s) to be Decided

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

Background and Evidence

This fixed term tenancy started on August 1, 2010 and was to expire on July 31, 2011. Rent was \$1,200.00 per month payable in advance on the 1st day of each month.

The following facts are not in dispute:

- The Tenant gave the Landlord a number of cheques and replacement cheques in payment of September 2010 rent and a security deposit however all of those cheques were returned to the Landlord unpaid. Consequently, the Tenant did not pay rent for September 2010 and did not pay a security deposit;
- On August 17, 2010, the Landlord's agent (H.T.) posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door. The Notice had an effective date of August 27, 2010;

- On August 27, 2010, the Landlord and her agent attended the rental unit with an RCMP member and advised the Tenant that she would have to move out by noon the following day;
- The Landlord and her agent returned to the rental property with another RCMP member on August 28, 2010 and discovered that the Tenant had not moved any of her belongings because she claimed she had nowhere to go and no one to help her move. The Tenant left with the RCMP member and the Landlord changed the locks on the rental unit;
- The Tenant with her former brother-in-law and mother-in-law attended the rental unit on August 30 and 31, 2010, to remove the Tenant's belongings. Some of the Tenants belongings were taken to the dump.

The Tenant claimed that the Landlord's agent told her that if she did not move out all of her belongings by noon on August 28, 2010, they would all be thrown out. The Tenant said that when the Landlord returned with an RCMP member on August 28, 2010, the RCMP member told her that she would have to leave until the Landlord and her agent calmed down. The Tenant said she objected to leaving if the Landlord was changing the locks on the rental unit with all of her belongings inside but despite her concerns, the RCMP member took her to a women's shelter. The Tenant said she had to make arrangements with the Landlord to gain entry to remove her belongings and do cleaning over the next 2 days. The Tenant said when she returned to the rental unit on August 30th, the Landlord's agent had taken her PVR and television set out of the rental unit and advised her that he would only return them once she removed her belongings, cleaned the rental unit and agreed in writing to pay the outstanding rent for August. The Tenant said the Landlord only returned those items to her a few weeks ago when she complained to the RCMP.

The Tenant also claimed that she could only store a few of her belongings and as a result, had to dispose of the following items:

Futon frame and mattress:	\$150.00
2 Dressers:	\$200.00
Entertainment unit:	\$150.00
Children's toys:	\$300.00
Towels and linens:	\$200.00
Dining set with 4 chairs:	\$350.00
Toiletries and make up:	\$100.00
A bag of shoes:	\$300.00
Cleaning supplies:	\$200.00

6 Lamps:	\$300.00
Christmas tree & decorations:	\$250.00
Child's bed and 3 mattresses:	\$200.00
Arm Chair:	\$200.00

The Landlord's agent claimed that on August 27, 2010 the Tenant agreed that she would move out the following day, however when he arrived on August 28, 2010 it was obvious to him that the Tenant had made no attempt to move out. The Landlord's agent said the RCMP member spoke to the Tenant in private for approximately 10 minutes and then the Tenant left with the RCMP member without saying anything to him or the Landlord. The Landlord's agent also claimed the Tenant agreed that he could hold her PVR and television "as collateral" until she paid the outstanding rent.

The Landlord denied that the Tenant had to throw out her belongings as she claimed. In particular, the Landlord said that on August 30, 2010 he noticed garbage piled up outside with an old dresser and an old rug (that had been there for a month). The Landlord's agent said that the Tenant's former mother-in-law advised him that these things would probably be thrown out but that she would take care of moving everything else. Consequently, the Landlord argued that the Tenant had provided little evidence to show that she had to throw out her articles.

Analysis

As provided in section 44 of the Residential Tenancy Act, in order for the Landlord to end the tenancy she required either a written agreement with the tenant as to the agreed end date of the tenancy, or needed to serve the tenant a 10 Day notice to End the Tenancy for unpaid rent. If the Tenant did not dispute the Notice (by applying for dispute resolution to cancel it) and did not move out on the effective date of the Notice, then the Landlord **must** apply for an Order of Possession under s. 55 of the Act.

In this case, I find that the Landlord and her agent improperly ended the tenancy on August 28, 2010 by changing the locks on the rental unit and advising the Tenant that if she did not leave her belongings would be thrown out. Although the Landlord and her agent argued that they had a verbal agreement with the Tenant to move out, I find that the evidence contradicts this assertion. In particular, the Tenant claimed that she tried to make arrangements with the Landlord's agent on August 19, 2010 to pay the rent for August 2010 but he would not speak to her. The Landlord's agent admitted that he told the Tenant on August 27th that she would have to be out the following day. The Landlord's agent also admitted that when the Tenant left on August 28, 2010 she did

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not say anything about not returning, all of her belongings were still in the rental unit and the Tenant still had her keys. Consequently, I find that the Tenant did not verbally agree to end the tenancy on August 28, 2010 and that instead the Landlord and her agent ended the tenancy in contravention of s. 44 of the Act.

Section 7 of the Act says that if a Party does not comply with the Act or tenancy agreement, the non-complying Party must compensate the other for damage or loss that results. The Tenant claimed that because the Landlord forced her to move out within a couple of days, she could not find storage for all of her belongings and had to dispose of many of them (which the Landlord denied). On this issue, the Tenant has the burden of proof. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof. However the Tenant did not provide any corroborating evidence (such as a witness or photographs) and as a result, I find that she has not provided sufficient evidence to show that she was forced to abandon her belongings.

However, I find that the circumstances of this case warrant awarding the Tenant 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.”

I find that in unilaterally ending the tenancy agreement, the Landlord and her agent acted carelessly and with indifference to the reasonably foreseeable suffering and inconvenience to which the Tenant would be put by being forced (on very short notice) to find emergency accommodations for herself and her 2 children and storage for their belongings. Consequently, I award the Tenant aggravated damages of **\$2,000.00**.

Conclusion

A Monetary Order in the amount of \$2,000.00 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.



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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 28, 2010.

Dispute Resolution Officer