



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage or loss under the Act, return of the deposit paid, return of his personal property and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant did not submit any evidence in support of his monetary claim.

The tenant acknowledged receipt of the landlord's 10 pages of evidence.

The landlord submitted copies of photographs to the Residential Tenancy Branch; however, the tenant was not served with copies. Therefore, the photographic evidence was not referenced.

Issue(s) to be Decided

Is the tenant entitled to compensation and return of the deposit paid in the sum of \$5000.00?

Must the landlord be Ordered to return the tenant's personal property?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord provided a copy of the signed tenancy agreement which indicated that tenancy commenced on July 20, 2010, that the term of the tenancy was monthly with the first day of the term as the 1st of each month; that rent was \$1,000.00 per month, due on the first day of each month. The landlord submitted that the term of the tenancy ran from the 20th to the 20th of each month.

On July 20, 2010, the tenant paid a \$500.00 deposit.

The landlord provided a copy of an undated email sent by the tenant giving notice that he would vacate the rental unit by the end of November and that most of his belongings would be moved out by the 15th of the month. The parties each stated that the notice was given either at the end of October or in early November.

On November 20, 2010, the landlord M.K. asked the tenant if the new occupants could store some items in the basement of the home. The tenant said he would make some room that evening and that they could bring some items.

The tenant arrived home from work on November 22, 2010, to find strangers in the house, all of his personal property missing and the home filled with the new occupant's belongings. The occupants told the tenant that they now lived in the home.

The tenant made attempts to immediately contact the landlord. The male landlord returned a call to the tenant and told the tenant he could retrieve his belongings the next day. The tenant stated he had never talked with the male landlord, who had returned the tenant's call on behalf of landlord M.K.

The tenant described 3 attempts made where he rented a van, had friends hired to assist and attended at the rental unit after making prior arrangements with the landlord to pick up his belongings. The landlord did not attend on any of these occasions; November 22, 27 and December 2, 2010. The tenant testified that on December 2, 2010, the police had attended at the rental unit with the tenant and they waited 1 hour and the landlord failed to arrive.

The landlord stated that the tenant knew the occupants were going to move in on November 21, that he was aware the house had been rented and that his property had been placed in the garage. The landlord stated the tenant gave short notice and that M.K. had accepted this notice, as the tenant had a new residence.

The landlord acknowledged he is holding the tenant's personal property, that he has catalogued the items and that the tenant needs to sign, acknowledging receipt of the items. The landlord stated that the tenant has fabricated the events he described in his attempts to retrieve the personal property and that the tenant has been aggressive and unreasonable, resulting in police involvement. The landlord stated the police have been involved due to the actions of the tenant; not the landlord.

The tenant claimed damage or loss for the cost of van rental, payment to individuals who were to assist him in moving, the loss of 3 days wages, fuel, accommodations, personal items, clothes, phone calls and the stress caused by not having access to his personal property since November 22, 2010. The tenant stated that he has not even had his toothbrush. The tenant stated that one point, when was completing an earlier application for dispute resolution, he ceased the process, as the landlord had promised to return the property; that did not occur.

The landlord stated he is entitled to storage costs; however an application was not submitted.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

During the hearing, pursuant to section 65(1)(e) of the *Act*, I Ordered the landlord to return the tenant's personal property. The parties came to an agreement as follows, based on my Order:

- They will meet at the residential property on Tuesday December 28, 2010, at 7 p.m.;
- The landlord will bring the tenant's property to the roadside;
- The personal property will be in boxes;
- That tenant will have an opportunity to view the boxes and to load the boxes;
- The tenant will not enter onto the residential property; and
- The tenant will remove all boxes from the roadside.

I Order the landlord to ensure that all of the tenant's personal property available at the roadside for the tenant no later than 7:30 p.m. on December 28, 2010, which should

assist in avoiding potential conflict between the parties. Once all of the belongings are at the roadside the landlord is free to leave the area and allow the tenant to load his property in the absence of the landlord.

The tenant is not required to sign for the property and there is no provision under the Act that prohibits the tenant or landlord from having a witness present. I suggested that the parties seek the support of a police officer, in an attempt to keep the peace.

There is no evidence before me of a written mutual agreement ending the tenancy any earlier than the date given on the notice by the tenant; "for the end of November," 2010. The landlord was not entitled to retain the tenant's personal property; the property was not abandoned as the tenant had been consistently residing in the home and he had legal possession of the rental unit. I find, based on the evidence before me, that the landlord seized the tenant's property on November 22, 2010, when the landlord, without having obtained authority under the Act; placed new occupants into the rental unit.

I have considered the landlord's submission that the term of the tenancy ran from the 20th of each month. This belief is in direct conflict with the written tenancy agreement submitted as evidence. Therefore, in the absence of evidence that the landlord had been issued a Writ of possession or any written mutual agreement ending the tenancy had been reached between the parties ending the tenancy on November 21, 2010, I find that the landlord was not entitled to possession of the rental unit and that a serious breach of the Act occurred when the new occupants were placed in the home and the tenant was denied his personal property.

The landlord submitted that the tenant has been unreasonable, that he has been aggressive and any police involvement has been due to the behaviour of the tenant. However; the behaviour of the parties after this tenancy was ended, in breach of the Act, on November 22, 2010; has no bearing on the rights and obligations each party had under the Act. The landlord had no right to deny the tenant his personal property and there is no evidence before me that the landlord made immediate efforts on November 22, 2010, to supply the tenant with his property. There is no doubt that the tenant could have become upset, stressed and disturbed at the failure of the landlord to assist him.

During the hearing the parties agreed that the tenancy ended on November 22, 2010; the day the landlord took illegal possession of the unit. The parties agreed that the landlord will retain a portion of the deposit for the balance of November rent owed, to the 21st. The landlord agreed to return the balance of the deposit to the tenant.

The daily rent was \$32.88; the tenant owed November rent for 21 days in the sum of \$690.48. The tenant paid \$500.00; therefore, the landlord may retain \$190.48 of the

deposit. The parties understood that the tenant would be issued a monetary order for the balance of the deposit owed and the landlord confirmed he will pay by cheque.

In relation to the monetary claim for damage or loss for the cost of van rental, payment to individuals who were to assist him in moving, the loss of 3 days wages, fuel, accommodations, personal items, clothes, phone calls, I find that the tenant has failed to submit any verification of out-of-pocket expenses supporting this claim and that this portion of the application is dismissed; although I have no doubt that he has been seriously inconvenienced and stressed by the actions of the landlord.

In relation to the tenant's claim for the stress caused by the landlord's breach of the Act, I have considered Residential Tenancy Branch policy, which suggests:

An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I find that the policy in relation to the awarding of nominal damages is reasonable and that the tenant is entitled to nominal damages in the sum of \$500.00 for the infraction of his legal right to possess his personal property that has been held by the landlord in breach of the Act. This compensation is what I consider to be at the high end permitted for nominal damages and I have found the tenant is entitled to this amount in consideration of the egregious breach of the Act committed by the landlord on November 22, 2010.

I find effective November 22, 2010, the landlord took possession of the rental unit without legal authority, in breach of the Act. The tenant gave written notice ending the tenancy at the end of November, 2010; the tenancy agreement was a monthly term commencing on the 1st day of each month; yet on November 22, 2010, the landlord removed the tenant's personal property from the home and moved new occupants into the tenant's home. The tenant had agreed to allow the new occupants to place some items in the basement, but entered his home to find strangers and the new occupants, who had fully moved into the unit.

Even though the tenant paid \$500.00 rent on November 5, 2010; the landlord could only obtain legal possession of the unit by issuing a Notice ending tenancy and then obtaining an Order of possession or, by requesting an Order of possession based upon a written mutual agreement ending the tenancy on November 22, 2010; this did not occur. There was no evidence before me of a written agreement mutually ending this tenancy and the landlord confirmed receipt of the tenant's notice ending the tenancy at

the end of November; evidence which supports the tenant's submission that there was no agreement that he vacate on November 22, 2010.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been Ordered to return the tenant's personal property on December 28, 2010; at 7 p.m. and must have all of the tenant's personal property at the roadside of the residential property by 7:30 p.m.

The claim for compensation for out-of pocket expenses is dismissed.

The tenant is entitled to nominal compensation for loss in the sum of \$500.00.

The landlord will return the balance of the deposit paid in the sum of \$309.52 and retain \$190.48 in November rent owed.

The tenant is entitled to the \$50.00 filing fee.

Based on these determinations I grant the tenant a monetary Order for the balance of \$859.52. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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: December 24, 2010.

Residential Tenancy Branch