

DECISION

Dispute Codes CNL, MNDC, LAT, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- An Order Cancelling a Notice to end Tenancy - Section 47;
- A Monetary Order for compensation for damage or loss - Section 67;
- An Order to authorize the Tenant to change the locks of the rental unit - Section 70
- An Order to recover the filing fee for this application - Section 72.

Both parties were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the outset of the Hearing, the Tenants confirmed that after receiving the Notice to End Tenancy, they served the Landlords with notice to move out earlier than the date required by the Notice. As a result, they no longer wish to pursue a cancellation of the Notice and that part of the Tenant’s application is hereby dismissed.

Issue(s) to be Decided

Are the Tenants entitled to compensation for damage or loss?

Are the Tenants entitled to an authorization to change the locks of the rental unit?

Are the Tenants entitled to an Order to recover the filing fee for the application?

Background and Evidence

DAMAGE OR LOSS (Trailer)

The tenancy started in April 2007 with Tenant A. The Landlords live in the upper part of the residence and Tenant A rented a suite in the lower part of the residence. At some point in time, Tenant B moved into the lower residence with Tenant A and the Landlords agreed to increase the area rented by Tenant A. The Tenants also accepted a rent increase to accommodate Tenant B. Tenant B parked a trailer used for his work on the

residential property with the awareness of the Landlords. The Tenants state and the Landlords agree that in January 2011, the unintentional actions of the Landlord caused damage to a trailer owned and parked by the Tenants on the rental property. The Tenants state that the trailer stored his tool and work supplies. The trailer was damaged to the extent that I.C.B.C. wrote the trailer off. In an Invoice to the Landlord, dated February 21, 2011, the Tenants claimed the amount of \$800.00 plus H.S.T as the compensation for the replacement of the trailer. That invoice also included costs to hire labour to dismantle and reassemble the shelves, labour to move the tools, and Tenant B's time spent driving to ICBC, picking up the new trailer and getting insurance. The Tenant states that he was unable to complete the labour himself as he was at the time incapacitated by surgery to his arm. The Tenant did not provide evidence of labour costs other than his own invoice. The Tenants did not provide evidence of the contents or structure inside the trailer.

The Landlords state that despite the parking of the trailer at the rental residence, such parking of the trailer was not agreed to, does not form a part of the rental agreement and therefore is not something they are liable for in their capacity as Landlords. The Landlords further state that if they are liable they should only be required to pay the difference in the cost of replacing the trailer alone. In particular, the Landlords state that they have no knowledge of the state of the inside of the damaged trailer and do not believe that the shelving replacement was either necessary or as costly as claimed by the Tenants.

DAMAGE OR LOSS (MOVE)

The Tenants claim \$1,200.00 in compensation for moving to a new location.

LOCKS

The Tenants states that the Landlord has entered their unit on previous occasions without notice or permission. The Tenants state that the Landlords have not entered their suite without notice or permission recently or since December 2010 however they state that since the dispute over the trailer damage, the landlord has indicated that the dispute will cost them money and the Tenants are concerned that because of this statement by the Landlord their belongings are at risk should the Landlord have access to their suite. The Tenants further state that they will be moving out of the residence by March 15, 2011. The Landlords deny that they have any intention to enter the suite without appropriate authorization.

Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. "Tenancy agreement" is defined by the Act as "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 Landlord argues that that parking of the trailer on the residential property was not agreed to and does not form a part of the rental agreement. As the Landlord lives on the same residential property as the Tenants, I find that the trailer was parked at the residential property for a period of time with the full knowledge of the Landlords. No evidence was offered by the Landlords indicating notice to the Tenants that they could not park the trailer on the residential property. Given these facts, I find that the Landlord provided implied consent to the Tenants for use of the residential property to park the trailer and as such this use of the residential property by the Tenant becomes an implied term of the tenancy agreement as defined by the Act.

Given the Landlord's acceptance that his actions caused the damage to the trailer, I find that the Tenant is eligible to be reimbursed for the difference between the cost to replace the trailer and the amount provided by the Insurer, or \$807.00 plus H.S.T. as set out in the invoice to the Landlord. Given the lack of evidence provided in relation to the interior of the Trailer, and considering that the Landlord had no knowledge about the inside of the trailer, I find that the Tenant has not satisfied the requirement to show, on a balance of probabilities, damage or repair to the inside of the trailer. Given these findings, I find that the Tenant is eligible for an award of \$807.00 plus 98.84 (12% H.S.T.), or **\$905.84** in compensation for damages to the trailer.

Section 51 of the Act provides for compensation to the Tenant when a Landlord serves notice to a Tenant under Section 49 (Landlord's use of property). This compensation amounts to the equivalent of one (1) month's rent and requires the Landlord to pay that amount to the Tenant. Given this compensation contained within the Act, I dismiss the Tenant's application for compensation for moving costs. The Tenant is at liberty to make an application for the payment of the one (1) month's rent, should the Landlord fail to comply with this section of the Act and pay this amount to the Tenant.

Section 70 of the Act provides that if a landlord is likely to enter a rental unit without authority, an order may be provided to authorize the tenant to change the locks. While the dispute over the trailer has caused animosity between the parties, I cannot find that the evidence offered by the Tenants concerning the Landlord's statement over the cost of that dispute is related to any intention or threat by the Landlord to cause damage to the personal belongings of the Tenants. Accordingly, I decline to provide an order authorizing the change of locks to the rental unit and dismiss that part of the application.

As the Tenant has been found to be entitled to an award for damage or loss, I find that the Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenants' total entitlement is **\$955.84** ($\$907.84 + 50.00 = \955.84).

Conclusion

I order the Landlord to pay to the Tenant the amount of **\$955.84**. If necessary, this order may be filed in the 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: March 15, 2011.

Residential Tenancy Branch