



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, RPP, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to return the Tenant's personal property, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that she mailed copies of these documents, via registered mail, to the Tenant on April 20, 2011 or April 21, 2011. She submitted no evidence to corroborate that statement. The Tenant stated that he did not receive any evidence from the Landlord. As the Tenant did not acknowledge receiving documents from the Landlord and the Landlord did not submit evidence to corroborate her statement that it was mailed, I did not accept the Landlord's evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for the loss of the quiet enjoyment of his rental unit, for withdrawal of services that were to be provided as part of the tenancy agreement, and for a rent refund; whether there is a need for an Order requiring the Landlord to return the Tenant's personal property; and whether the Tenant is entitled to recover costs of participating in these proceedings.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began sometime in 2008 and that the Tenant was required to pay rent of \$800.00 on the first day of each month.

The Landlord stated that on January 03, 2011 a Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the Tenant's door, which declared that the Tenant must vacate the rental unit by March 04, 2011. The Tenant stated that he located the Two Month Notice to End Tenancy on his door on January 04, 2011 or January 05, 2011, that he did not have the Notice with him at the time of this hearing, and that he is uncertain of the declared effective date of the Notice.

The Tenant stated that he did not sleep at the rental unit after January 07, 2011, although he still had property in the rental unit at that time. He stated that he stopped sleeping at the rental unit after January 07, 2011 as he believed the Landlord's dog threatened his safety and the safety of his daughter.

He stated that he returned to the rental unit on thirteen occasions after January 07, 2011 for the purposes of recovering his property but he was unable to exit his vehicle on those occasions because the Landlord's dog was barking aggressively at him. He stated that he was able to remove some of his belongings after January 07, 2011 on those occasions when he returned to the unit and the dog was not outside. He initially stated that he did not return to the rental unit after January 31, 2011 although he later stated that he did return once in February, at which time he retrieved "most" of his property.

The Tenant stated that on February 09, 2011, February 10, 2011, or February 11, 2011 he sent a document to the Landlord, via registered mail, in which he informed the Landlord that he intended to vacate the rental unit in ten days.

The Landlord agrees that the Tenant did not sleep in the rental unit after January 07, 2011 but she contends that he returned to the property on several occasions in January and February, at which time he removed most of his property. She stated that she received a written notice from the Tenant, via registered mail, which was dated February 11, 2011, in which he informed her that he intended to vacate the rental unit in ten days. She stated that she believes she received this notice on February 13, 2011. She stated that she changed the locks to the rental unit on February 21, 2011 and she locked the gate to the residential property on February 21, 2011.

The Landlord and the Tenant agree that the Tenant paid \$550.00 in rent for January of 2011 and that he paid no rent for February of 2011.

The Tenant is claiming compensation, in the amount of \$1,750.00, for having to share the common yard of this residential property with the Landlord's dog, which he contends has breached his right to the loss of the quiet enjoyment of his rental unit. He contends that the dog frequently chased his vehicle, barking uncontrollably and biting at his tires;

that the dog lunges and barks at him uncontrollably; that his daughter is afraid of the dog and would not play in the yard if the dog was outside; that his daughter did walk the dog on one occasion; and that the dog bit him sometime in April of 2010. He stated that he frequently asked the Landlord to control her dog; that the Landlord is unable to control the dog; and that he eventually reported the dog to the animal control officer on February 22, 2011.

The Landlord acknowledged that her dog frequently barked at the Tenant, but she contends that this was because the Tenant would throw things at the dog. She acknowledged that her dog bit the Tenant in April of 2011 and that the bite drew blood, but she contends the bite was not serious. She stated that the Tenant's daughter was not frightened by the dog and that she played with it when it was outside. She stated that she frequently saw the Tenant and his daughter playing outside. She stated that she did try to contain the dog more often after the dog bit the Tenant but it did continue to be antagonistic towards the Tenant when it was outside.

The Tenant is seeking compensation for a rent refund for all rent he paid since January 07, 2011, as he no longer felt safe living in the rental unit due to the perceived threat from the Landlord's dog.

The Tenant is seeking compensation, in the amount of \$650.00, for the thirteen trips he made to the residential property to retrieve his property and prevented him from accessing the rental unit by the dog, who was barking and being antagonistic.

The Tenant is seeking compensation, in the amount of \$400.00, for being without a washing machine for five months. The Landlord and the Tenant agree that the rental unit was equipped with a washer and dryer; that the washer stopped working approximately five months prior to the end of the tenancy; and that it was not repaired prior to this tenancy ending. The Landlord stated that she did not repair the washing machine as she believed the Tenant used the wrong detergent and was, therefore, responsible for the repairs. The Tenant stated that he was never told that he should use a particular kind of detergent in the washing machine. The Landlord presented no evidence to show that the Tenant had been informed that he should use a particular kind of detergent.

The Tenant is seeking compensation for expenses he incurred travelling to the Residential Tenancy Branch offices in an attempt to resolve his disputes with the Landlord. At the hearing the Tenant was advised that I would not be considering this claim for compensation, as these travel expenses were not necessary, given that he can easily communicate with the Residential Tenancy Branch by phone or internet.

The Tenant is seeking compensation for work he did on the residential property. He stated that he did odd jobs on the property and that the Landlord currently owes him \$60.00 for his labour. At the hearing the Tenant was advised that I would not be considering this claim for compensation, as it relates to an employment contract over which I have no jurisdiction.

The Landlord and the Tenant agree that the Tenant left property at the rental unit. The Landlord stated that she placed some of the Tenant's property in boxes and she discarded some of his property that she considered to be of no value. The Landlord stated that she will provide the Tenant with access to his property at 4:00 p.m. on May 07, 2011. The Tenant stated that he will attend at the residential property at that time and date for the purposes of recovering his property. As the parties have agreed to a time for the property exchange, I find that there is no need to issue an Order requiring the Landlord to return the property.

At the hearing the Tenant was advised that he has the right to file an Application for Dispute Resolution claiming compensation for any property that he believes the Landlord has not returned to him after he has fulfilled his agreement to meet with the Landlord on May 07, 2011. The Tenant was reminded that he bears the burden of proving that the Landlord did not return property to him if he elects to file an Application for Dispute Resolution.

Analysis

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord initiated an end to this tenancy when she posted a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant's door on January 03, 2011.

Section 49(2) of the *Act* stipulates that a Notice to End Tenancy served pursuant to section 49 of the *Act* must end the tenancy effective on a date that is not earlier than two months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As this Notice to End Tenancy was not posted until January 03, 2011 and rent is due on the first of each month, the earliest effective date of the Notice was March 31, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the Two Month Notice to End Tenancy was March 31, 2011.

Section 50(1)(a) of the *Act* stipulates that a tenant who has received a notice to end tenancy pursuant to section 49 of the *Act* may end the tenancy early by giving the landlord at least ten day's written notice. I find that the Tenant ended this tenancy early when he mailed the Landlord written notice of his intent to vacate the rental unit in ten days. As the Tenant does not recall when the written notice was mailed to the Landlord and the Landlord acknowledges receipt of the notice on February 13, 2011, I find that she received this notice on February 13, 2011. As the Tenant's notice served pursuant to section 50(1) of the *Act* must provide the Landlord with at least ten days notice, the earliest effective date of this notice, pursuant to section 53 of the *Act*, was February 23, 2011.

Section 50(1)(b) of the *Act* stipulates that a tenant must pay the proportion of rent due to the effective date of the tenant's notice, which in these circumstances was February 23, 2011. I find, however, that the Tenant is only obligated to pay rent for the period between February 01, 2011 and February 20, 2011, as he was locked out on February 21, 2011. Based on a per diem rate of \$28.57, I find that the Tenant was obligated to pay \$571.40 for the period between February 01, 2011 and February 20, 2011. I find that the Tenant still owed rent of \$250.00 from January of 2011, bring his total rental arrears to \$821.40.

Section 51 of the *Act* stipulates that a tenant who receives a Notice to End Tenancy pursuant to section 49 of the *Act* is entitled to the equivalent on one month's rent payable under the tenancy. As this Tenant did receive a Notice to End Tenancy pursuant to section 49 of the *Act* and he was required to pay monthly rent of \$800.00, I find that he is entitled to compensation of \$800.00, pursuant to section 51 of the *Act*. I therefore find that the Tenant's rent is in arrears by \$21.40 for the period between January 01, 2011 and February 20, 2011.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. As this is the Tenant's Application for Dispute Resolution, he bears the burden of proof in these proceedings.

As the Tenant and the Landlord both agree that the dog regularly barked at the Tenant and that he bit the Tenant on one occasion, I find that the behavior of this dog did interfere with the quiet enjoyment of the Tenant's rental unit. I find that it would be unpleasant for most people to regularly contend with an antagonistic dog, particularly when the dog has demonstrated a propensity to biting. I find that the presence of this dog on common residential property reduced the value of this tenancy by \$25.00 per month.

In not awarding greater compensation for the loss of quiet enjoyment of this rental unit I find that there was an absence of evidence that corroborates the Tenant's statement that his daughter would not play outside when the dog was outside or that refutes the Landlord's evidence that his daughter did play outside when the dog was in the yard and that the daughter interacted well with the dog. In reaching this conclusion, I was influenced by the Tenant's admission that his daughter did walk the dog on one occasion, which would not have happened, in my view, if she was frightened of the dog.

Section 7(2) of the *Act* stipulates that a tenant who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. In my view the Tenant should have taken steps to remedy this breach, by either filing an Application for Dispute Resolution or filing a complaint with the animal control authorities. Had he

attempted to mitigate this breach within a reasonable period of three months, it is entirely likely that he would have been able to enjoy his tenancy without being disturbed by the dog. I therefore find that the Tenant is only entitled to compensation for the loss of the quiet enjoyment of his rental unit for a period of three months, which is \$75.00. In making this award I am heavily influenced by the fact that the Tenant was bitten long after he should have mitigated his losses.

I find the Tenant's claim that he had to vacate the rental unit on January 07, 2011 because he feared the Landlord's dog posed a risk to him and his daughter to be highly unbelievable. Given that the Tenant had lived with this dog for over three years and that he remained in the rental unit for over eight months after the dog bit him, I cannot conclude that the dog prevented him from remaining in the rental unit after January 07, 2011 or that the presence of the dog was related to the end of this tenancy. Given that the Tenant moved within days of receiving the Notice to End Tenancy, I find, on the balance of probabilities, that he moved because of the Notice and not the presence of the dog. I therefore dismiss his application to recover any rent that was paid for January of 2011 on the basis that he was prevented from living at the rental unit.

Similarly, I find the Tenant's claim that he was prevented from removing his personal property from the rental unit on thirteen occasions after January 07, 2011 because the dog prevented him from accessing the rental unit to be highly unbelievable. Given that the Tenant was able to access his rental unit for the vast majority of this tenancy, in spite of the dog's behavior, I find that it is incomprehensible to believe that the dog prevented him from removing his belongings at any point during the month of January or February. In reaching this conclusion I was heavily influenced by the fact that the Tenant continued to reside at the rental unit after the dog bit him and was not prevented from accessing his rental unit while he elected to sleep there.

Section 27(2) stipulates that a landlord may only terminate or restrict a non-essential service such if the landlord reduces the rent in an amount that is equivalent to the reduced value of the tenancy resulting from the termination of the service or facility. In my view the Landlord had an obligation to either repair the washing machine when it broke or to reduce the rent. In my view not having access to a washing machine reduced the value of this tenancy by \$40.00 per month and I find that the Tenant is, therefore, entitled to compensation of \$200.00.

Conclusion

I find that the Tenant has established a monetary claim of \$325.00, which is comprised of \$75.00 for a loss of the quiet enjoyment of his rental unit; \$200.00 for being without a washing machine for approximately five months; and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I find that this monetary Order should be reduced by \$21.40, which is the amount the Tenant owes in rent.

On the basis of these calculations, I am issuing a monetary Order for the balance of \$303.60. In the event that the Landlord does not voluntarily comply with this Order, it

may be 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: May 03, 2011.

Residential Tenancy Branch