



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, RPP, OPT, LAT, FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; for return of the security deposit paid to the Landlord; for an Order that the Landlord comply with the Act, Regulation or tenancy agreement; for an Order that the Landlord return the Tenant's personal property; for an Order of Possession of the rental unit; for an Order authorizing the Tenant to change the locks to the rental unit; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents to the Landlord, via registered mail, to the address provided on the Intent to Rent form, on March 31, 2011. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. A search of the Canada Post tracking system indicates that an attempt was made to deliver the documents to the Landlord on April 1, 2011, and a Notice was left indicating where the item could be picked up.

Based on the evidence of the Tenant, I am satisfied that he served the Landlord with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Documents served in this manner are deemed to be received 5 days after mailing, whether or not the recipient chooses to accept delivery. The Landlord did not sign into the teleconference and the Hearing continued in his absence.

Preliminary Matters

The Tenant testified that he has found a new place to live and therefore he no longer wishes to proceed with his application for an Order of Possession, or an Order

authorizing him to change the locks on the rental unit. There is no indication that the Tenant paid a filing fee. Therefore, I considered only the remaining issues identified on the Tenant's Application for Dispute Resolution.

Issues to be Decided

- Did the Landlord illegally end the tenancy and, if so, is the Tenant entitled to compensation in the amount of \$500.00 for failing to comply with the Act?
- Is the Tenant entitled to return of the security deposit paid to the Landlord?
- Is the Tenant entitled to an Order that the Landlord return his personal belongings?

Background and Evidence

The Tenant gave the following testimony:

The rental unit is shared 3 bedroom accommodation in the basement of a house. The Tenant rented a bedroom and shared a kitchen, bathroom and living area with two other occupants. The Tenant moved into the rental unit on or about December 20, 2010. Rent was \$395.00 at the beginning of the tenancy, but after a month the Tenant moved into a larger room and paid \$445.00 a month. Rent included the use of a washer and dryer. The Tenant paid a security deposit in the amount of \$197.50 at the beginning of the tenancy.

The shower and bathtub were not functioning throughout the tenancy and the Tenant had to use the facilities at the local YMCA. The toilet didn't flush properly.

Approximately 2 weeks into the tenancy the Landlord locked the laundry room and would not allow the Tenant to use it. The Landlord told the Tenant that he was doing too much laundry and that the electricity bills were too high.

It was cold in the rental unit and one of the other occupants turned the stove on to keep the common area warm, which upset the Landlord. The Landlord entered the Tenant's

bedroom without notice and removed the Tenant's space heater. On March 13, 2011, the Landlord told the Tenant he had to move out because he had only paid rent until March 15, 2011. The Tenant checked with the Ministry of Social Development, who advised him that his rent had been paid by the Ministry for the full month of March, 2011. On March 29, 2011, the Landlord assaulted the Tenant, punching him and pushing him down to the ground. Another occupant called the police, who took the Tenant away. Two hours later a police officer accompanied the Tenant back to the rental unit and with her assistance he was able to get his jacket back, but nothing else. The Landlord would not let him back into his home and he was effectively kicked out onto the street, where he slept that night.

The Landlord will not return the Tenant's possessions, including:

- All of his carving tools and some carvings;
- An electric cooler;
- Personal papers and identification;
- Clothing;
- Dishes for cooking;
- Bedding;
- 21 speed bike; and
- Food.

Analysis

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.

Based on the affirmed testimony of the Tenant and in the absence of any evidence to the contrary from the Landlord, I am satisfied that the Tenant has proven his claim for compensation for damage or loss. Section 44 of the Act provides the only methods by which a tenancy can end. The Landlord did not issue a Notice to End Tenancy, the Tenant did not give the Landlord notice that he was ending the tenancy and there was no mutual agreement to end the tenancy. It is illegal for a landlord to evict a tenant without a Writ of Possession from the Supreme Court of British Columbia. Therefore, I find that the Landlord did not comply with the provisions of Section 44 of the Act and that he illegally ended the tenancy on March 29, 2011. I further find that the Tenant suffered as a result of the Landlord illegally ending the tenancy and is entitled to compensation in the amount of \$500.00.

There was no Condition Inspection Report completed at the end of the tenancy and therefore, pursuant to the provisions of Section 38(5) of the Act, the Landlord's right to claim against the security deposit is extinguished. The Tenant's application for return of the security deposit is granted.

It is illegal for a landlord to seize a tenant's personal property without a court order. I hereby order the Landlord to return the tenant's personal property to the Tenant forthwith. The Tenant must provide the Landlord with 24 hours written notice of where and when the Tenant will pick up his personal belongings. If the Landlord does not comply with this order, I give the Tenant leave to apply for compensation for the loss of his personal property.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of \$697.50 for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

I order that the Landlord return the Tenants personal possessions upon receipt of 24 hours written notice of where and when the Tenant wishes to pick them up. If the Landlord fails to comply with this order, the Tenant is at liberty to apply for compensation for the loss of those items.

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: April 19, 2011.
