



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC , MNSD, OLC, RPP, OPT

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, the return of the security deposit paid, an Order that the landlord comply with the Act, an Order to force the landlord to return the tenant's property and an Order of Possession to the tenant.

The tenant appeared and testified that the landlord was served by registered mail providing copies of the receipt from Canada Post and the tracking number. I accept that the documents were served according to the Act. As the landlord did not appear, despite being properly served, the hearing proceeded in the landlord's absence.

Issue(s) to be Decided

- Is the tenant entitled to receive a monetary order for damages and loss?
- Is the tenant entitled to the return of the security deposit?
- Is the tenant entitled to an Order of Possession?
- Should there be an order against the landlord to comply with the Act and return the tenant's possessions?

The burden of proof is on the applicant.

Background and Evidence

The tenant testified that the tenancy began in April, 2011, the rent was \$1,000.00 and a security deposit of \$500.00 was paid.

The tenant testified that there were some problems with the unit involving the landlord illegally entering the unit at will without notice as well as other concerns. The tenant stated that in July 2011 she had fallen into arrears for rent. The tenant testified that ,

the landlord had apparently become aware that the tenant had a warrant against her for failure to appear and, according to the tenant, the landlord reported her to the police, after which she was arrested and taken into custody on July 15, 2011. The tenant testified that she was released from incarceration two days later on July 18, 2011 and when she returned home, she found that the landlord had removed all of her furniture and personal possessions and changed the locks on her suite. The tenant testified that her property was not stored in a secure place by the landlord and was merely left in a common area in the complex where others could, and evidently did, access her personal belongings. The tenant testified that she lost all of her worldly possessions because of the landlord's violation of the Act and is claiming compensation of \$2,500.00 in damages which includes aggravated damages of \$2,000.00.

The tenant stated that she was left homeless, without any of her belongings including documents and only had the clothes she was wearing. The tenant stated that the landlord had never issued a Notice to End Tenancy and had merely took possession of the unit while the tenant was in a vulnerable situation and helpless to prevent the actions of the landlord. The tenant submitted into evidence copies of letters that she had allegedly sent to the landlord on July 10, 2011 and July 19, 2011 and also a list of her belongings that were never recovered.

No evidence was received from the landlord.

Analysis

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that if tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

I find that the Act provides that a tenancy remains in effect until such time it ends under section 44 of the Act. Before a landlord can validly end a tenancy for unpaid rent, or any other reason, the landlord must first:

- Issue and serve the tenant with a Notice to End Tenancy based on one of the valid reasons listed under sections 44 to 53 of the Act.
- If the tenant then refuses to vacate the rental unit pursuant to the Notice, the Act requires a landlord to then make an application for dispute resolution, to obtain an Order of Possession pursuant to section 55 of the Act.
- Following this, the landlord must serve the Order of Possession on the Tenant.
- Should the tenant not comply and remain in possession of the rental unit after service of the Order of Possession, the landlord would need to make application and obtain a Writ of Possession issued under the B.C. Supreme Court Civil Rules.. This is pursuant to section 57(2) of the Act.
- To enforce the writ the landlord must utilize the services of a registered bailiff to change the locks and remove the tenant's belongings.
- With respect to a tenant's personal belongings, the landlord would be required follow due diligence in safely storing any abandoned belongings in a secure place and not confiscate or dispose of them, except in accordance with Part 5 of the Residential Tenancy Regulation.

In this instance I find the landlord failed to follow any of the above statutory provisions contained in the Act or the Regulations. I find that no Notice to End Tenancy was ever issued, no Order of Possession was ever obtained by the landlord with respect to this tenancy and no Writ of Possession was granted by the Court authorizing the landlord to physically take possession of the unit and evict the tenant against her will.

I find as a fact that the tenant was occupying the rental unit at the time the landlord chose to remove the contents of the rental unit. Notwithstanding the fact that the tenant had contravened the Act by not paying rent, I find that the landlord was still not entitled to retaliate by circumventing the Act in forcefully taking possession without following due process.

In addition to other various legal ways of ending a tenancy, section 44 of the Act provides that a tenancy may be considered to be at an end if a tenant moves out and abandons the rental unit. Abandonment would permit a landlord to remove the tenant's possessions from the rental unit without a court order. I find that section 24 of the Residential Tenancy Regulation contains strict criteria that must be met for a landlord to consider a tenant to have abandoned personal property.

Given the evidence before me, it is clear that the tenant did not abandon the unit nor did she abandon her personal property in the unit. I find that the tenant still had legal possession of the unit, and the tenant's belongings were wrongfully removed by the landlord in blatant contravention of the Act. In this respect, I find that the landlord would therefore be liable for any damage or loss that resulted from the landlord's violation of the Act.

Based on the testimony, I find that the landlord also wilfully contravened several other sections of the Act including section 28, tenant's right to quiet enjoyment; section 30, tenant's right of access; and section 29, landlord's right to enter rental unit restricted.

In addition to the above violations, I find that section 26(3) of the Act states that, whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not: (a) seize any personal property of the tenant, or; (b) prevent or interfere with the tenant's access to the tenant's personal property.

Even in cases where a tenant *has* willingly chosen to abandon the rental unit, the landlord would still be required to comply with section 25 of the Residential Tenancy Regulations with respect to the tenant's property. This section states that the landlord must store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal and keep a written inventory of the property. Moreover, section 30 of the Regulations states that the landlord owes a duty of care to the tenant when dealing with a tenant's personal property and must exercise due diligence and caution as required by the nature of the items to ensure that the property is not damaged, lost or stolen. Therefore, by assuming the right to take charge of the tenant's property, I find that the landlord's treatment of the tenant's possessions was not consistent with the duty of care obligations specified in the Regulations.

Having found that the tenant met elements 1 and 2 of the test for damages, I find that element 3 of the test must also be satisfied by proving the value of the loss to support the amount of damages being claimed. I find that the tenant's list of missing items was composed from the tenant's memory, and this does not hold the same evidentiary weight that actual documentation, such as receipts for the original purchases, would have. However, I find that the tenant has attempted to the best of her ability, under severe circumstances to furnish verification of value in order to satisfy the burden of

proof she carries. In this case, the tenant explained that she could not provide records due to the manner in which she was evicted, and I accept this testimony as a fact.

Based on the evidence before me, I do find that the tenant suffered a loss of property stemming from the landlord's multiple violations of the Act and the tenant did, or will, incur expenses to replace her essential household effects as a result of this.

Accordingly, despite the tenant's inability to provide comprehensive documentary evidence of the existence and the value of each item on her list, I find that the tenant is entitled to some compensation. I find that the \$2,500.00 loss estimated by the tenant is well-within the minimum amount considered as reasonable for any person to relocate without notice and set up a new household. Accordingly I find that the tenant is entitled to monetary compensation for the wrongful eviction and confiscation of property in the total amount of \$2,500.00.

I also find that the tenant is entitled to an abatement of rent otherwise owed for July 2011 in the amount of \$1,000.00 that was owed but never paid to the landlord.

With respect to the return of the tenant's security deposit, I find that a landlord always holds these funds in trust on behalf of the tenant. Pursuant to section 38 of the Act, the landlord has no right to retain the security deposit after the tenancy ends without making an application and obtaining an order to keep the deposit in compensation for damage or loss pursuant to section 7(1) and section 67 of the Act. Therefore, as this tenancy has permanently ended, I find that the landlord must also return the tenant's \$500.00 security deposit to the tenant forthwith.

I find that the landlord must release and make available to the tenant any remaining items belonging to the tenant that may still be under the landlord's control at this time.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation from the landlord in the amount of \$3,000.00.

I hereby issue a monetary order in favour of the tenant for \$3,000.00. The order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if necessary.

I hereby order the landlord to immediately release and make available for retrieval by the tenant, all of the tenant's remaining possessions, if any still exist, that are presently in the possession, or under control of, the landlord.

This decision is final and binding and 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: August 19, 2011.

Residential Tenancy Branch