



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, MNSD

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. A monetary order for compensation for damage or loss in the amount of \$20,000.00;
2. An Order that the landlord return the tenant's security deposit; and
3. An Order that the landlord return the tenant's personal property.

This hearing was originally scheduled for August 22, 2011. At that time the landlord attended the hearing to request an adjournment. The landlord testified that he had not had time to review the evidence in this matter or to seek legal advice and this was particularly necessary due to the sum being sought.

The landlord's request for an adjournment was granted and the hearing was rescheduled for September 26, 2011. The landlord did not appear.

The tenant gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to any of the Orders sought?

Background and Evidence

The tenant testified that he paid a security deposit of \$212.50 at the start of this tenancy in 2010. The tenant says the rental unit was a single room with no bathroom or cooking facilities although there was a fridge in his room. The tenant says his rent of \$524.00 per month was paid directly to the landlord by social assistance. The tenant says the conditions in the room were disgusting. The tenant says his room and the common areas were infested with rats, mice and cockroaches. The tenant says there was mould on the walls and only one working shower in the building. There was often no hot water for periods of 2 to 4 weeks. The tenant says there were 3 communal washrooms on

each floor but the toilets were plugged and unusable more often than not and sewage would back up all over the floor.

The tenant says his room was frequently burglarized and he had broken window near the fire escape which was never fixed. The tenant says the landlord himself cut the lock off his room two or three times. The rules were such that tenants were not allowed to have guests and would often have to bribe the doorman to let them bring a friend up.

The tenant says he has a prescription for methadone. The tenant says the landlord told him that he would have to get any prescriptions he requires filled at the dispensary the landlord directs otherwise he will be evicted. The tenant says he witnessed dispensations and noted improper sanitary conditions. The tenant says he was paid \$20.00 every Friday for filing his prescriptions where he was told to do so and he was told he's get another \$20.00 for every other person he brought to fill a prescription and \$50.00 for anyone he brought to the building to rent a room.

The tenant says the conditions at the building were such that he began to drink excessively and take drugs. The tenant says advocates came to assist the tenants to file complaints and they took photographs of his room invited him to a meeting but the landlord offered the tenant some work at another hotel at the time of the meeting. The tenant says he failed to show up for his shifts and when he returned he was told that he was evicted. The tenant says he lost his clothing, false teeth, TV, toaster, coffee maker and his other possession including photographs of his four children and his deceased wife. The tenant says that since making this application he has learned that his belongings have been destroyed and they can no longer be returned to him. The tenant is therefore seeking compensation for his loss and for loss of quiet enjoyment

The tenant says that since his illegal eviction on June 30, 2011 his security deposit has not been returned to him. The tenant says he did not provide his forwarding address to the landlord. The tenant says the landlord cashed the July social assistance rent cheque but did not let him back into the rental unit. The tenant says because it was cashed social assistance would not give the tenant another cheque and the tenant was homeless throughout July.

Analysis

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. 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.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

If a claim is made by a tenant for damages for breach of the abandonment regulations by the landlord the normal measure of damages is the market value of

the lost articles, i.e. the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant.

Based on the undisputed evidence of the tenant I find that while he did not specifically seek aggravated damages by using the term “aggravated damages” I find that his written submissions are sufficient to notice to the landlord that aggravated damages were being sought.

I am satisfied that the tenant suffered a great deal of disruption during his tenancy with absolutely no benefit. The evidence shows that the living conditions, as evidenced by the photographs were appalling, the landlord clearly did not maintain the rental unit as is required and there were weeks without hot water and pest infestations. As if the living conditions themselves were not bad enough the tenant was forced to live under threats of eviction if he did not purchase his prescriptions where the landlord directed, the tenant was not allowed guests nor was he allowed to lock his room and it was frequently burglarized. All of this was followed up with the final humiliation of being locked out of his home permanently leaving him homeless for a month and losing all of his personal belongings including photographs of his deceased wife which photographs cannot be replaced. Overall I find that the evidence shows that the landlord acted in a wilful and reckless manner with complete indifference to the tenant’s suffering. The evidence is that this tenancy lasted for over a year and that this tenant has suffered a great deal during this time. There has been no evidence to even suggest that the landlord made his or her best efforts to minimize the disruptions to the tenant.

In making an award I reminded that I have no authority to award punitive damages. Aggravated damages may be awarded where the conduct of the respondent justifies such an award but the award must be compensatory, not punitive, although the damages should take account of the claimant’s intangible injuries such as distress and suffering. In this application the tenant seeks damages totaling \$20,000.00.

In *Warrington v Great-West Life Assurance Co.*, (1996) 24 BCLR (3D), The B. C. Court of Appeal considered the appropriateness of an award of aggravated damages made to a party who had been deprived of total disability insurance benefits for a period of some 26 months. The trial judge awarded the plaintiff the sum of \$10,000.00 to recognize the hardship and humiliation caused by the insurer’s refusal to pay benefits to which the plaintiff was clearly entitled, forcing him to rely on the charity of family and friends and to apply for social assistance. On appeal, counsel for the plaintiff argued that the \$10,000

award was “inordinately low”. Speaking for the Court Madam Justice Newbury had this to say:

As for the amount of aggravated damages awarded by the trial judge, I do not agree with Mr. Pierce’s argument that it was inordinately low. Most of the cases in this area indicate that courts should exercise caution in their awards for mental distress (see, e.g., the judgment of this Court in *Wilson v. Sooter Studios Ltd.* (1988) 42 B.L.R. 89 at 92), and the trial judge’s award was if anything higher than those made in comparable cases to which we were referred.

I consider that awards in the amounts suggested by the tenant would cross the threshold from compensatory to punitive. I note further that the burden of proving loss and damage rests with the applicant and there is a duty upon the claimant to act reasonably to mitigate or minimize the loss and there has been little evidence of mitigation. Being guided by these principles I therefore will award the tenant \$6,000.00.

With respect to the security deposit, Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The evidence of the tenant is that he has not provided the landlord with his forwarding address. The tenant’s claim is therefore premature and it is therefore dismissed with leave to reapply.

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: September 26, 2011.

Residential Tenancy Branch