Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

The matter was originally scheduled to be heard on July 6, 2011 and on that day the Tenant claimed that she had served the Respondents with the Application and Notice of Hearing (the "hearing package") by registered mail to their respective residences however neither of the Respondents attended the hearing. Consequently, the matter was adjourned to August 9, 2011 so that the Tenant could confirm that the addresses to which she sent the hearing packages were, in fact, the current residences of the Respondents. On July 8, 2011, Notices of the Reconvened Hearing were sent to each of the Parties setting out the new date and time of the hearing and on August 9, 2011 all Parties attended the reconvened hearing.

The Respondent, J.B., admitted that he had received notification about the registered mail sent by the Tenant which contained her hearing package and that he had refused to pick it up. In the circumstances, I find that the Respondent, J.B., was served with the Tenant's hearing package as required by s. 89 of the Act. The Respondent, L.V., denied having received the Tenant's hearing package, or an evidence package or the Notice of the Reconvened Hearing and claimed that she did not have a key to the mail box at her residence. L.V. claimed that she contacted the Residential Tenancy Branch in advance of the original hearing date and was advised that the hearing had been dismissed (which was not the case). L.V. said she only found out about the reconvened hearing because she received the Tenant's 2nd evidence package on August 3, 2011 and contacted the Residential Tenancy Branch to find out if there was a hearing scheduled.

The Tenant provided a registered mail receipt for the hearing package in this matter that she said she sent to L.V. The Canada Post online tracking system shows that notification cards were delivered to L.V.'s residence on March 31, 2011 and April 5, 2011 to advise her of that registered mail. The Tenant also provided a registered mail receipt for the 1st evidence package she said she sent to L.V. The Canada Post online tracking system shows that notification cards were left for L.V. at her residence on June 28, 2011 and July 4, 2011 however that registered mail was also unclaimed by L.V. The Tenant argued that L.V. has a history of failing to pick up registered mail and noted that she also failed to pick up registered letters and a hearing package for previous proceedings held in September 2010 (involving this tenancy). I find it unlikely that L.V.

did not receive any of the registered mail notification cards or the Notice of the Reconvened Hearing in this matter or that she has no access to the mailbox at the residence where she has resided for approximately four years. Instead, I find it more likely that L.V. was avoiding service of these documents and accordingly, I find that she was served with the Tenant's hearing package and evidence packages as required by s. 88 and 89 of the Act.

At the beginning of the 1st day of the reconvened hearing, L.V. sought an adjournment so that she could review the Tenant's evidence package(s). I find that the Tenant sent the 2nd package to L.V. by registered mail on July 22, 2011. Section 90(a) of the Act says that a document sent by mail is deemed to be received 5 days later (or on July 27, 2011), however L.V. picked up this mail a week later on August 3, 2011. In the circumstances, I find that the Tenant has complied with RTB Rule of Procedure 3.5 regarding the service of evidence and as a result, I dismissed L.V.'s application for an adjournment. Following the 1st day of the reconvened hearing, I granted L.V. and J.B. the opportunity to submit their responding documentary evidence (as a courtesy) no later than August 19, 2011 however they did not do so.

At the beginning of the 1st day of the reconvened hearing, L.V. also argued that there was no jurisdiction to hear this matter because she did not have a written tenancy agreement with the Tenant and because she shared kitchen facilities with the Tenant. I find that there is no merit to these arguments for the reasons set out below in the Analysis section of this Decision.

At the beginning of the 1st day of the reconvened hearing, the Respondent, J.B., argued that he was not properly named as a Party to these proceedings and said he wished to leave the hearing. I advised the Parties that I would hear evidence on this issue and after having done so I advised them that I would reserve my decision until a later date. J.B. was also advised that as a Respondent, it was in his interests to hear all of the evidence however it was up to him if he chose not to participate in the rest of the hearing. J.B. left the conference call approximately half way through the 1st day of the reconvened hearing and did not attend the 2nd day of the reconvened hearing.

At the beginning of the 2nd day of the reconvened hearing L.V. sought another adjournment as she claimed she had been hospitalized and needed more time to respond to the Tenant's evidence package. I advised L.V. that I could not grant an adjournment to give her more time to respond to the Tenant's evidence package because I had already made a finding on the 1st day of hearing that the Landlords had been properly served with the Tenant's evidence package and had a reasonable opportunity to respond to it but failed to do so. Although the Respondents were given a further opportunity to submit their evidence following the 1st day of hearing, this was done as *a courtesy only.*

L.V. also claimed that her ill health prevented her from responding to the Tenant's evidence. L.V. provided a handwritten note from her physician on an undated prescription form that stated, "L.V.'s tenancy hearing must be delayed due to her

medical illness." L.V. claimed that she has been managing serious illnesses for approximately 3 years but she could not say when she would be able to participate in the hearing. I advised L.V. that the Rules of Procedure address such situations by allowing a person to have an agent or advocate act on their behalf or assist them at the hearing. L.V. stated that she had a friend with her (J.H.) who would be able to act in this capacity however she still did not want to proceed with the hearing. I advised L.V. that I would hear from the Tenant as to her position on the adjournment application however L.V. became argumentative and began shouting at and interrupting the dispute resolution officer. I warned L.V. that if she continued to yell at the dispute resolution officer and be disruptive she would be removed from the conference call to which she replied, "fine" and hung up. L.V. did not dial back into the conference call for the remainder of the hearing.

The Tenant did not dispute that the Landlord, L.V., suffers from a number of serious illnesses however she said it was her experience that L.V. often used this as "an excuse" and that it did not prevent L.V. from removing her from the rental property. I note that L.V. was able to respond to the Tenant's evidence and represent herself capably during the 1st day of the reconvened hearing. Even if L.V. believed that she could not adequately represent herself as she claimed on the 2nd day of the reconvened hearing, it was at all times open to her to obtain the assistance of an agent or advocate and she admitted on the 2nd day of the reconvened hearing that she had a friend attending with her that could assist in that capacity. Consequently, I dismissed L.V.'s second adjournment application and the hearing proceeded in her absence.

Issue(s) to be Decided

1. Is J.B. properly named as a Party in these proceedings?
2. Does this matter fall within the jurisdiction of the Act?
3. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

The Landlord, L.V., rents the rental property (which is a house) from the Landlord, J.B., who is the owner and resides in Chicago, Illinois. The Tenant rented a bedroom in the upper level of the rental property and shared common areas including a kitchen with L.V. Another tenant, E.S., resides in a separate lower suite in the rental property. The Tenant initially resided in the rental property from December 17, 2007 until approximately August 2008. During the term of that tenancy, the Parties had a written tenancy agreement and the Tenant paid a security deposit. The Tenant then moved back into the rental property on September 13, 2009 but did not sign a tenancy agreement or pay a security deposit. Rent was initially $600.00 per month but the Tenant agreed to pay an additional amount for utilities when her boyfriend, C.M., moved into the rental unit with her.

The Tenant said her mother who resided in England became ill, so the Tenant purchased an airline ticket departing on June 25, 2010 and returning on August 28, 2010. The Tenant said she made arrangements with her boyfriend to pay the rent for and look after her dog (in conjunction with her friend, G.W.) in her absence. The Tenant said she met with the Landlord, L.V., prior to leaving for England and made it clear that C.M. would be paying the rent in her absence and said if he failed to do so, she would wire the money to L.V. The Tenant said she also made it clear to L.V. that she would be returning on August 28, 2011. The Tenant said rent was paid by C.M. on her behalf for July and August 2010.

The Tenant said that while she was visiting her mother in England, her relationship with her boyfriend came to an end and she advised C.M., that he would have to move out by the end of August. The Tenant said that L.V., then began "harassing her by e-mail and over the telephone about her status as a tenant." The Tenant's agent claimed that on August 16, 2010 while he was at the rental property, L.V. advised him that the Tenant was no longer welcome in the rental property. Consequently, G.W. said he tried to give L.V. a letter (which she refused to take so he left it on the gate while she watched) which stated that the Tenant would be returning on August 28, 2010 and looking for other accommodations at that time and warned her not to remove the Tenant's belongings as she had previously said she would do.

On August 17, 2010, G.W. said he returned to the rental property to retrieve the Tenant's vehicle and computer but was denied access to the property. On August 19, 2010, G.W. said he received a call from a person identifying themselves as an employee of the Residential Tenancy Branch who said he needed to remove the Tenant's belongings. The Tenant said he recognized the voice of the caller as a friend of L.V.'s. G.W. said when he arrived at the rental property, all of the Tenant's belongings had been placed at the end of the driveway. The Tenant's agent, G.W., said he asked neighbours to watch the Tenant's belongings while he made arrangements to have them moved and to find accommodations for the Tenant's dog. The Tenant's agent also filed an application for dispute resolution seeking an order of possession of the rental unit. G.W. said he also sent the Landlord or owner, J.B., a letter advising him of the actions of L.V. in the hope that he might intervene but he got no response.

G.W. said he asked L.V. to store the balance of the Tenant's belongings in the garage until the Tenant returned from England. G.W. said when he arrived at the rental property on August 27, 2010 however he found that L.V. had put those belongings at the end of the driveway, along with the Tenant's unlocked vehicle, the keys to which had been left on the driver's seat. The Tenant said her mattress had been placed on top of the car (exposed to the elements) with food sitting on top of that. The Tenant said she when she returned, she had to reside with a friend of G.W.'s as she had nowhere else to go.

The Tenant claimed that due to the stress of dealing with L.V. during her visit to England, she became depressed and suffered from anxiety and had to seek

counselling. As a result, the Tenant sought aggravated damages for being illegally evicted. The Tenant also argued that due to having to deal with the threat of being evicted, she "was robbed" of spending valuable time visiting her ill mother who passed away approximately 10 months later. The Tenant said she also incurred the following out of pocket expenses as a result of the actions of L.V.:

- Storage expenses: $42.00
- Moving expenses: $150.00
- Long distance telephone charges: $800.00
- Dog boarding expenses: $225.00
- Registered mail expenses: $60.00
- Process server expenses: $95.00
- Legal expenses: $65.00
- Fees for G.W.'s representation: $925.00

The Tenant also claimed that certain possessions of hers were not returned and she sought an Order requiring the Landlord, L.V., to return them to her.

The Landlord, L.V., said that she was upset with the Tenant for allowing her boyfriend to move into the rental property without her approval and made it clear to the Tenant as early as March 2010 that they would have to move out but the Tenant kept putting her off. L.V. admitted that as she got to know the Tenant's boyfriend, she did not have any issues with him but that her relationship with the Tenant became strained because the Tenant became verbally abusive to her and the other tenant of the rental property which made it too stressful for her. L.V. said she was going to give the Tenant a One Month Notice to End Tenancy for Cause before she left for England in June 2010 but decided not to do so because she had no idea if the Tenant planned to return.

The Landlord, L.V., also said the Tenant initially agreed that her boyfriend could take over the rental unit but then changed her mind when they broke up. L.V. said she believed that the Tenant's boyfriend was entitled to the rental unit because he had been paying the rent for the previous 4 month period. For all of these reasons, L.V. said that when the Tenant advised her from England that she would be returning, L.V. was concerned and advised the Tenant that she could not come back to the rental unit.

L.V. argued that the Tenant was seeing a counsellor prior to being told she could not return to the rental unit because she was depressed and having difficulty dealing with the ill health of her mother.

Analysis

Jurisdiction argument: L.V. argued that there is no jurisdiction under the Act to hear this matter because she did not have a written tenancy agreement with the Tenant and the Tenant did not pay a security deposit. Section 2(1) of the Act states that "the Act applies to tenancy agreements, rental units and other residential property." Section 1

of the Act says (in part) that a tenancy agreement can be written or oral. RTB Policy Guideline #9 discusses the difference between a licence to occupy and a tenancy agreement. A licence to occupy occurs when permission is given to use property but it may be revoked at any time. On the other hand, if there is "exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. The Guideline then lists some factors that may weigh against a finding that there is a tenancy.

I find that the fact that the Tenant did not pay a security deposit is insufficient to displace the presumption of a tenancy. In particular, I find that the Tenant paid rent each month in return for the exclusive use of a room and that L.V. did not have the right to access it without notice. I also find that there was no agreement that the Tenant could be evicted without a reason or leave without giving notice. In fact, L.V. admitted that she intended to evict the Tenant prior to June 2010 by giving her a One Month Notice to End Tenancy for Cause. This step would not have been necessary if there was no tenancy as the L.V. claimed.

L.V. also argued that there is no jurisdiction under the Act to hear this matter because she shared kitchen facilities with the Tenant. Section 4(c) of the Act states however that this only applies when the *owner* of the property shares kitchen or bathroom facilities with a tenant. L.V. admitted that she is not the owner of the rental property and as a result, I find that there was a tenancy and the Act does apply to this dispute.

Application to Remove a Party: The Tenant claimed that on several occasions L.V. rented rooms in the property on behalf of J.B. The Tenant also claimed that L.V. once told her that she collected rent moneys on behalf of J.B. to "shelter her from tax fraud." The Tenant further claimed that L.V. advised her "*in the past*" that she was acting as the property manager for the owner, J.B. but that this arrangement changed when J.B. wanted L.V. to pay the property taxes. The Tenant also claimed that L.V. advised her that J.B. instructed L.V. to remove the Tenant and her belongings.

Both L.V. and J.B. denied these accusations and claimed that L.V. has always rented the whole rental property from J.B. and it was her decision alone if she wanted to sub-let rooms to other tenants. J.B. admitted that he asked L.V. to pay the portion of his tax bill for garbage collection but denied that she acted as a property manager on his behalf. J.B. also claimed that he had no contractual or other relationship with the Tenant and never communicated with her which the Tenant admitted.

Even if L.V. acted as a property manager for J.B. "*in the past*" as the Tenant claimed, I find that there is no evidence that L.V. was acting in this capacity during the tenancy in question (September 13, 2009 to August 17, 2010). Instead, I find the weight of the evidence strongly supports a finding that J.B. is merely the owner of the rental property who rents it to L.V. and that the Tenant sub-let the rental unit from L.V. Consequently, I

find that there is insufficient evidence to conclude that J.B. is a Landlord as defined under s. 1 of the Act.

The Tenant also argued that because J.B. was made aware of the "illegal eviction" of the Tenant by L.V., he had a "moral duty" to the Tenant to intervene. I find, however, that this is not the case. Rather, had J.B. interfered in the tenancy relationship between L.V. and the Tenant, he could potentially have been liable for damages to L.V. for interfering with her contractual relationship with the Tenant. In summary, I find that the Tenant has provided insufficient evidence to show that J.B. had a duty to her either under contract or common law and as a result, the style of cause in this matter is amended by removing J.B. as a party.

Application for Damages: For the reasons set out earlier, I find that there was a verbal tenancy agreement between the Tenant and L.V. for a month-to-month tenancy at a rental rate of $600.00 per month and that the Tenant paid an additional amount for utilities when her boyfriend (C.M.) moved in.

I find on a balance of probabilities that the Tenant told L.V. that she would be travelling to England to visit her ill mother in June of 2010 and would be returning in late-August, 2010 because she had already purchased a return airline ticket with a return date. L.V. denied that the Tenant told her that she would be returning on August 28, 2010 or at all. L.V. admitted that she knew that all of the Tenant's belongings were still in the rental unit including her dog and that the Tenant would have to come back to get them, however she claimed that she thought the Tenant would just return to remove her belongings. However, L.V. admitted in her oral evidence that on August 3, 2011 she received a Face Book message from the Tenant advising her that once she got back she would be looking for a new residence. The Tenant also advised L.V. that since she had broken up with her boyfriend and advised him that he was no longer welcome to stay in the rental unit and would have to find somewhere else to stay. It is also clear from other correspondence given by the Tenant's friend, G.W., to L.V. prior to August 17, 2010 that L.V. knew the Tenant intended on her return to reside in the rental unit.

I find that there is no evidence to support L.V.'s argument that the Tenant ended her tenancy when she left for England or abandoned the rental unit. I accept the Tenant's evidence that she paid rent for June 2010 and made arrangements with her boyfriend to pay the rent for July and August 2010 on her behalf, in her absence. I further find that the Tenant asked G.W. and L.V. to advise her if her boyfriend did not pay the rent and in that event she would send a payment to L.V. Consequently, I also find that the Tenant's conduct is inconsistent with L.V.'s assertion that the Tenant ended her tenancy.

Instead I find that it was L.V. who ended the tenancy. L.V. admitted at the hearing that she did not want the Tenant to return to the rental property because it had been too stressful living with her. I find that on August 16, 2011, L.V. advised the Tenant and

G.W. that the Tenant would not be permitted to return to the rental property. On August 19, 2010, L.V. removed substantially all of the Tenant's belongings from the rental unit and placed them in an unsecured area on the side of a public street.

The Tenant claimed that as a result of the actions of the Landlord, she incurred a number of out of pocket expenses including legal expenses of $65.00 and expenses of approximately $925.00 for G.W. to represent her in this matter. However, the Act does not make provision for the recovery of costs related to being represented or assisted in dispute resolution proceedings and as a result, these claims are dismissed without leave to reapply. The Tenant also sought to recover long distance telephone charges of approximately $800.00, process server expenses of $95.00, dog boarding expenses of $225.00 and registered mail expenses of $60.00. However the Tenant did not provide any evidence (such as bills) that she incurred these expenses and as a result her claim for them is dismissed without leave to reapply. Furthermore, I find that the registered mail expenses would not be recoverable given that they are were incurred prior to the Tenant filing her application for dispute resolution in this proceeding.

I find however, that the Tenant has provided sufficient evidence to support her claim for moving expenses of **$150.00** and storage expenses of **$42.00** and I award her those amounts. The Tenant withdrew her application for flight expenses of $800.00. Finally, the Tenant sought aggravated damages of $1,651.28. RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

Section 44 of the Act sets out the various ways a tenancy can end. As stated above, I find that the Landlord unilaterally ended the tenancy without giving the Tenant notice required under the Act and in contravention of s. 44 of the Act. In other words, I find that the Landlord not only breached her tenancy agreement with the Tenant but also aggravated the Tenant's damages by removing her belongings from the rental unit when the Tenant was in England and left them in a public street exposed to the elements and potentially theft and vandalism. Consequently, I find that the Landlord acted wilfully, recklessly and indifferent to the harm and suffering she caused to the Tenant when she unilaterally ended the tenancy in contravention of the Act.

The Tenant claimed that she was so distressed over the Landlord's actions that she became depressed and anxious and had to get counseling. The Landlord argued that the Tenant sought counseling prior to being advised that she could not return to the rental unit. I find it irrelevant if the Tenant sought counseling as a result of her mother's condition or as a result of the actions of the Landlord. In particular, I find that regardless of the Tenant's concern over her mother, she likely would have suffered

mental distress worrying about the welfare of her dog and her possessions as well as where she would reside on her return. I find that the Tenant's distress was likely exacerbated given that the Landlord ended the tenancy at a time when the Tenant could do nothing about it until she returned from England on August 28, 2011.

I also find that the Tenant was put to great inconvenience. In her absence, the Tenant had to rely on her friend, G.W., to find a place on very short notice to accommodate her 16 year old dog and to store her belongings. I also find that on her return, the Tenant had nowhere to live and had to rely on the goodwill of friends to accommodate her until she was able to find another residence. Consequently, I find that this is an appropriate case to award aggravated damages in the amount of **$1,500.00** which is equivalent to 2 ½ month's rent. I make this award having regard to the fact that the Tenant paid for (or had rent paid on her behalf) for the month of August 2010 however she was denied the use of the rental unit by the Landlord for ½ of that month. This award also represents a further 2 month period to which the Tenant would have been entitled to reside in the rental unit before the tenancy could have ended had the Landlord given proper Notice under the Act and enforced it through dispute resolution as she was required to do.

I Order the Landlord pursuant to sections 62(3) and 65(1)(e) of the Act to return to the Tenant the following items belonging to her no later than September 30, 2011 failing which the Tenant may re-apply for compensation for the value of them:

- One pair of fishing waders;
- 2 Lamps;
- One Blender and other kitchen items;
- 2 rings and a necklace;
- 3 precious stones;
- Clothes;
- Tax documents; and
- Modelling photographs.

Conclusion

A Monetary Order in the amount of **$1,692.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 15, 2011.

Residential Tenancy Branch