



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to Order the Landlord to return the Tenant's possessions, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation and/or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain Orders as a result of that breach, pursuant to sections 65, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that JB and CL were living in a common law relationship that began with them occupying a bedroom in the Landlord's basement. CL is the Landlord's daughter. Then in approximately June or July 2011 JB and CL entered into a verbal tenancy agreement with the Landlord to rent the cabin that was located on the same property as the Landlord's house. Rent was payable on the first of each month in the amount of \$550.00. JB paid \$300.00 and CL paid \$250.00 towards the monthly rent. The Landlord signed the "Intent to Rent Form" so that the Ministry of Social Development would provide funds for JB's rent from Income Assistance. No security deposit was paid.

JB affirmed that after arguments with CL he left the rental unit on October 24, 2011 and stayed with friends. When he returned to the rental unit the locks had been changed and a note was taped to the door that said "Locks changed, no rent no access". He called the police for assistance in retrieving his possessions and was told it was best to leave and deal with this through Residential Tenancy. JB stated that the Landlord confronted him and told him that he would rather burn JB's possessions than return them.

Witness (2) affirmed that she and Witness (1) are JB's parents and that they called CL the morning of October 28, 2011 to retrieve JB's possessions. Witness (2) stated that during that telephone conversation CL demanded they pay \$300.00 for November 2011 rent before she would release JB's possessions to them. They only had \$200.00 cash on them so after providing CL with the cash she signed the receipt as provided in JB's evidence and returned some of JB's possessions.

Witness (2) stated that when they attend CL's workplace to pick up more of JB's possessions she demanded more money. Witness (1) and Witness (2) confirmed they have attempted to be decent when dealing with CL however there has been a "continuous request for money".

JB advised there are still four items that he is seeking to have returned which are his Passport, Bissell vacuum, Norco Catmandu bike, and his wireless repeater.

CL agreed that the relationship had deteriorated and JB left the rental unit on October 24, 2011. She confirmed that because her father was the Landlord she would collect the rent and would pass it to him. Her father, the Landlord, changed the locks on the rental unit. CL stated that she put the sign on the door which said "Locks changed no access". When asked if it also said "no rent" she stated she could not remember.

CL stated that when JB left he had a verbal agreement with her that he would pay November's rent. She said she had done some research and found out that because he did not provide her with one month's notice they would be entitled to November's rent. She said she did not "demand" money from JB's parents rather she told them he had agreed to pay the November 2011 rent and that when they gave her the \$200.00 they agreed to give her the remaining \$100.00.

CL confirmed she is still in possession of three of the four possessions JB is seeking. She advised she has searched the cabin and she has not seen JB's passport. She said that the bike was found by JB and that he verbally agreed to give it to her, just as he did with the vacuum. The wireless repeater was purchased in order to activate the internet

in the cabin so she is of the opinion it was a household expense item and would stay with the house.

The Landlord's Agent, JT, affirmed that she is the Landlord's girlfriend and although she resides at the Landlord's house she does not have firsthand knowledge of any dealings that went on regarding the rental agreement, the cabin, or the Landlord and his daughter and her boyfriend. JT confirmed the Landlord is the only one who dealt with his daughter, her boyfriend, and the rental unit.

In closing JB stated that he never agreed to pay for November rent in advance, when he left on October 24, 2011 because he was not sure at that time if he was returning. He never told CL or the Landlord that he was moving out which is why he was so surprised to see they had changed the locks prior to October 28, 2011. He confirmed he paid his rent in full for October and therefore should have been entitled to access for the full month. As for his possessions, JB said he never agreed for CL to keep any of them. CL has her own bike which is a cruiser and not a mountain bike like his. He believes his passport was left in CL's file cabinet as he is certain that he had it while living at that property. The only item he agreed to leave with CL was a television that used to be his parents.

Witness (1) and Witness (2) confirmed that the television used to be theirs and that JB had told them he had agreed to leave that for CL. They also questioned how CL could demand November's rent be paid on October 28, 2011 when rent was not payable until the first of each month and when they had changed the locks so JB could no longer access the rental unit.

CL's closing remarks were a repeat of her previous statement in that she is of the opinion that she was within her rights to request November's rent.

JT added that she was witness to the interaction between JB and the Landlord and she wanted to say that the Landlord did not threaten to burn JB's possessions.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29(1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; (d) the landlord has an order of the director authorizing the entry.

Section 30 (1) of the Act provides that a landlord must not unreasonably restrict access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant.

Section 31 (1) of the Act provides that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

Section 31 (1.1) states that a landlord must not change locks or other means of access to a rental unit unless (a) the tenant agrees to the change, and (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

The parties agreed that when their relationship broke down JB left the rental unit October 24, 2011 and when he returned October 28, 2011 the locks to the rental unit had been changed denying him access to his possessions. These facts are not in dispute.

I accept the evidence before me which describes what I find to be an egregious breach of the Act by the Landlord. The Landlord attended the rental unit and changed the locks seizing JB's possessions inside which were later held for ransom for November rent by his Agent, his daughter CL, which I find to be egregious breaches of sections 28, 29, 30, and 31 of the Act.

As per the aforementioned, I find the Landlord(s) ended this tenancy illegally, in breach of the Act, seizing exclusive possession and use of the rental unit prior to October 28, 2011, without providing the Tenant an opportunity to retrieve his possessions and attend a move out inspection.

Having found the Landlord(s) seized possession of the rental unit on or before October 28, 2011, in breach of the Act, I find the Landlord is not entitled to rent for November 2011 and hereby Order the Landlord to return the **\$200.00** cash that was paid as ransom for the return of the Tenant's possessions. The Tenant will be awarded a monetary order to be served upon the Landlord which may be enforced in Provincial Court.

I favor the evidence of JB, who stated he is still attempting to retrieve four more items from the rental unit over the evidence of CL who stated the remaining items JB is requesting were given to her by JB and she has made an attempt to locate JB's passport. I favored the evidence of JB over CL, in part, because JB and his Witness's evidence was forthright and credible. JB and his Witnesses readily acknowledged that JB agreed to leave the television with CL after their relationship deteriorated. In my view JB's acknowledgement to leave the television in addition to the supporting testimony provided by his Witnesses relating to CL's demands for money in exchange for JB's possessions, lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find CL's explanation of what was written on the sign that she placed on the door and that she could not remember if the sign said "no money no access" to be improbable. I further note that JT's testimony was contradictory as she was very clear at the beginning of the hearing that she had no firsthand knowledge or experience with the dealings between the Landlord and the Tenants yet in her closing remarks she states

she witnessed the conversation between the Landlord and JB claiming that the Landlord did not threaten to burn JB's possessions. I accept JT's affirmed testimony that she had no firsthand knowledge of any dealings pertaining to this tenancy which leads me to question why the Landlord would have her attend this hearing in his absence. I find CL's explanation that JB gave her his remaining possessions to be improbable given the effort that has been put forth by JB and his parents for the return of all of his possessions. Rather, I find JB's explanation that their relationship deteriorated and once the locks were changed CL was holding his possessions for \$300.00 ransom to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Tenant's personal property has been seized in breach of the Act. Pursuant to section 65 (1)(e) of the Act I hereby Order the Landlord to search his entire property including the cabin and the Landlord's residence in attempts to locate JB's passport. I caution the Landlord that unlawful retention of a person's passport may be considered a Federal Offense.

I further Order that the Landlord is to release JB's possessions, in the same condition as they were when he left them, to JB and/or his parents (Witness 1 & Witness 2) at a time determined by them.

JB has been successful with his application, therefore I award recovery of the **\$50.00** filing fee.

The items to be returned to JB and /or his parents are JB's passport, **\$250.00** (\$200.00 + 50.00) **cash**, the Bissell vacuum, Norco Catmandu Bike, and the wireless repeater.

I hereby order JB and /or his parents to issue the Landlord a signed receipt for the \$250.00 cash and the property that is returned.

I hereby order that the Landlord's daughter, CL, is not to be present during the return of the Tenant's property.

JB will be at liberty to make application for dispute resolution to seek aggravated damages in the event the Landlord fails to comply with the above Orders.

Conclusion

The Landlord is hereby ordered to return the Applicant's possessions, as Ordered above, pursuant to Sections 62 and 65 of the *Residential Tenancy Act*.

The Applicant's decision will be accompanied by a Monetary Order in the amount of **\$250.00**. This Order is legally binding and must be served upon the Landlord.

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: November 30, 2011.

Residential Tenancy Branch