Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, OLC, OPT, AAT, LAT, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss; return of the deposit, an order the landlord comply with the Act; that the tenant be provided with an order of possession, be allowed access to the unit and to change the locks to the unit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the notice of hearing on May 19, 2012, sent by registered mail. The hearing package did not contain a detailed calculation of the claim.

On May 27, 2012, the tenant sent the landlord his evidence package via registered mail. The landlord confirmed receipt of the evidence on May 29, 2012; the evidence is deemed served on May June 1, 2012. Neither date meets the requirement of service; at least 5 days prior to the hearing; however, the landlord was willing to consider the tenant's submission.

On May 28, 2012, prior to receipt of the tenant's application, the landlord sent the tenant evidence, via registered mail, to the address indicated on the application for dispute resolution. This evidence would be deemed served to the tenant on June 2, 2012. The tenant stated he did not receive a notice of registered mail.

I determined that I would consider both evidence submissions; the landlord was to reference any specific piece of evidence, to allow the tenant to respond. I made this decision based on the landlord's willingness to consider the tenant's late evidence submission. This was not disputed by the tenant. The landlord's evidence included

copies of emails between the parties, none of which were disputed by the tenant during the hearing; and a copy of the tenancy agreement signed by the parties.

The tenant does not wish to have possession of the unit; therefore, the only matters I considered were the claim for compensation, the deposit and filing fee.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $3,853.55, for damage or loss under the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- A 1 year fixed-term tenancy commenced on August 1, 2011;
- Rent was $900.00 per month, due on the first day of each month;
- A deposit in the sum of $450.00 was paid, plus a $50.00 key fee;
- That the tenant paid April, 2012, rent in full; and
- That on April 21, 2012, the landlord changed the locks to the unit and the tenant was barred for accessing the unit.

The landlord had decided to list the property for sale, at which point the tenant attempted to end the fixed term tenancy, by sending the landlord notice on March 31, 2012. A mutual agreement to end the tenancy was not signed.

On April 20, 2012, the realtor attended at the apartment to place a lock box on the door of the unit and when she did so a guest of the tenant's was in the home. The events that followed are in dispute. The parties agreed that the female who was present in the home was essentially ejected from the unit. The landlord stated the female in the unit said she had rented the unit for the month of April and that the tenant had not lived there since February, 2012.

The tenant was contacted and met with his guest at the rental unit at approximately 8 p.m. on April 20, 2012. The guest agreed to leave and at 10 p.m. the landlord entered the unit with a friend; she demanded the tenant give her his keys to the unit and to leave. The locks to the unit were then changed.

The tenant and landlord met at the rental unit on the morning of April 21, 2012; access to the unit was refused. The tenant's witness was present at this time.

On April 23, 2012, the tenant went to the Residential Tenancy Branch, where a staff member attempted to reach the landlord so that arrangements could be made for return

of the tenant's personal belongings. The landlord could not be reached. On this date the tenant gave the landlord a written note requesting return of the deposit to a specific address; the landlord confirmed receipt of this note. The deposit has not been returned.

On April 24, 2012, the landlord agreed to give the tenant access to the unit; the tenant did attend at the unit but did not remove his belongings as he had paid rent to the end of the month.

The landlord believed that in April the tenant was no longer in possession of the unit; that he had been living elsewhere and subletting the unit. The tenant's furniture remained in the unit; however, no clothing was in the unit. Initially the tenant testified that his clothing was not in the unit, but his storage locker; then the tenant stated that his clothes were in the unit.

Neither party could provide any dates in May, 2012, that were set to allow the tenant to enter the home to retrieve his personal property. The tenant stated he had never been given proper notice to end the tenancy and had difficulty setting up a mutually agreeable time to meet at the unit with the landlord.

The tenant has made the following claim:

Postal box rental	53.00
Hotel for family while visiting	390.30
Rent refund	300.00
Moving company	450.00
Damage deposit	500.00
Eating out	300.00
Couch surfing	350.00
Insurance renewal	10.00
Storage	200.00
Gas	200.00
Coin laundry	60.00
Towels	30.00
April/May internet costs	50.00
Stress – damage or loss	900.00
TOTAL	3803.55

The tenant supplied verification in support of the claim for hotel costs, registered mail and a postal box obtained on April 23, 2012.

Email communication supplied as evidence indicated that on April 26, 2012, the landlord told the tenant she had received the request for return of the deposit and that she would do so when he claimed his personal belongings, moved and the inspection was completed. The landlord asked the tenant to contact her when he wished to claim his

furniture. On May 12, 2012, the tenant emailed the landlord asking for access to the unit on that date; no response was issued.

On May 16, 2012, the tenant again emailed the landlord requesting access to the unit; he asked for a time that would work for the landlord. The landlord replied but did not provide a time the tenant could come to the unit. On May 27, 2012, the tenant sent another email to the landlord asking for access on that date or prior to 11 am the next day; again the landlord replied but did not offer the tenant a time she could be available.

The tenant stated he had to rent a hotel room for 2 nights May 4 and 5th, 2012, to accommodate family who came to visit and could not stay with him in the unit. An invoice of payment was supplied as evidence.

As the tenant could no longer reside in his unit he rented a postal box; a receipt issued on April 23, 2012, was submitted as evidence.

The tenant claimed registered mail costs incurred as part of the hearing service requirements.

No other verification of costs claimed was supplied.

The tenant stated he has suffered stress from the loss of his rental unit. He has had to stay with friends, has lost his home and been of no fixed address. The landlord avoided him, would not give him access to the unit during the month of May and he was not properly evicted from the unit. These facts all contributed to stress and support the claim for damages.

The tenant supplied an email from his guest, sent to him on April 22, 2012. She described the event as traumatic; that the landlord had knocked on the door at 10 p.m. and said if she did not leave the police would be called. This female then packed her belongings and she gave the keys to the landlord. This individual felt she had been "screwed around big time," and asked that she not be contacted any further.

The landlord acknowledged that on April 20, 2012, she did remove the tenant's guest; a person she determined was a sub-let occupant. The landlord acknowledged she allowed the tenant in to the unit during the month of April, and that she had received rent in April.

Mutual Agreement – Return of Personal Property

The parties agreed to meet at the rental unit on Monday June 11, 2012, at 2 p.m. at which time the tenant will be given access to the rental; unit in order to remove all of his belongings. The tenant will be allowed whatever time is required in order to properly remove his property from the unit and storage locker.

Based on this mutual agreement; I Order the parties to meet on June 11, 2012. The landlord must provide access at 2 p.m. until such time as the tenant is able to remove all of his personal property from the rental unit and storage locker.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As the tenant has yet to incur costs for moving or storage, I find this portion of the claim was premature; he is at liberty to reapply for these costs.

Section 47(1)(i) of the Act provides that a landlord may issue a Notice to end tenancy for cause if:

> *(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34* [assignment and subletting].

If the landlord believed that the tenant was subletting the unit the landlord was required to either reach a mutual agreement to end the tenancy or to issue the tenant a Notice to end tenancy for cause. If the landlord then obtained an order of possession, by proving the allegation of sublet, she could then acquire legal possession of the unit. This did not occur.

In the absence of a Notice ending tenancy and an Order of possession, I find that on April 20, 2012, the landlord took possession of the unit, in breach of the Act. The tenant had paid rent to the end of April, 2012, and had a right to possess the unit. On April 23, 2012, after the locks were changed and the tenant had given the landlord notice of a forwarding address, requesting his deposit, I find, pursuant to section 44(1)(f) of the Act, that the tenancy was ended.

As the tenant no longer had possession of his rental unit, as a result of a breach of the Act by the landlord, I find that it was not unreasonable that he obtain a postal box and that he is entitled to the verified costs of that service.

The tenant has claimed the cost of registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied.

The tenant supplied a hotel receipt for 2 nights stay in early May, for family members he claims had nowhere else to stay. I find that this portion of the claim does not fall within the jurisdiction of the Act. Costs incurred by a 3rd party do not form a part of the tenancy.

As the tenant was denied access to the rental unit from April 21, 2012, to April 30, 2012, I find that he is entitled to compensation in the sum of $29.59 per day; totalling $290.59; the balance claimed is dismissed.

The landlord did not return the deposit, nor did she submit a claim against the deposit. Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Therefore, as the tenancy ended on April 23, 2012 and the landlord was given the tenant's address on that date, I find that the tenant is entitled to return of double the $450.00 security deposit.

The tenant provided no verification of the costs claimed for eating out, insurance renewal, gas, couch surfing, coin laundry, towels, or internet costs. Therefore in the absence of verification of the loss claimed, I dismiss those portions of the claim.

Whether the tenant was subletting the unit or not, the tenant was denied access to his home and the tenancy was not ended as required by the Act. The tenant submitted he suffered stress as a result of the loss of use of the home; that he was left to rely on friends, that he had nowhere to live and was in need of his deposit so that he could obtain a new residence.

Residential Tenancy Branch policy suggests that a dispute resolution officer does not have the authority to award punitive damages, to punish the respondent. I find this to be a reasonable stance. Therefore, I find that the tenant's claim for stress is dismissed. Further, the reasons given by the tenant relating to the claim for compensation due to stress duplicated other portions of the claim, which have been addressed in my analysis.

Therefore, the tenant is entitled to the following:

	Claimed	Accepted
Registered mail	10.25	0
Hotel for family while visiting	390.30	0
Rent refund	300.00	290.59

Moving company	450.00	0
Damage deposit	500.00	900.00
Eating out	300.00	0
Couch surfing	350.00	0
Insurance renewal	10.00	0
Storage	200.00	0
Gas	200.00	0
Coin laundry	60.00	0
Towels	30.00	0
April/May internet costs	50.00	0
Stress – damage or loss	900.00	0
TOTAL	3803.55	1243.59

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of $1,293.59, which is comprised of double the deposit, compensation for damage or loss and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,293.59**.** In the event that the landlord does not comply with this Order, it may be served on the landord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant has leave to reapply in relation to moving and storage costs.

Hotel costs were not within the jurisdiction of the Act.

The balance of the claim is dismissed.

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: June 06, 2012.

Residential Tenancy Branch