Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, CNR, LAT, MNDC, OLC, RTP

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a 10 day Notice to End Tenancy for unpaid rent, for a monetary order for compensation for damages or losses under the Act or tenancy agreement, for an order for the Landlord to comply with the Act or tenancy agreement, for an order for the Landlord to return the Tenant's personal property, for an order allowing access to the rental unit for the Tenant, and to authorize the Tenant to change the locks in the rental unit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties, the two witnesses and the Advocates for the Tenant gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The hearing was adjourned on July 26, 2012, in order for the Tenant and his Advocate to attend at the rental unit to retrieve any personal property of the Tenant. The attendance is discussed later in this Decision.

I note that the Tenant had given his Notice to End Tenancy to the Landlord to be effective on July 31, 2012. However, in early July the Tenant did not want to return to the rental unit for reasons described below. Little discussion on the Notice took place during the hearing. Therefore, I find that the issues of allowing access to the rental unit, authorizing the Tenant to change locks, and the 10 day Notice to End Tenancy do not need to be dealt with here, aside from these being described in the fact pattern of this matter, and I dismiss these issues without leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

This tenancy began on May 1, 2012, with the parties agreeing on a monthly rent of $400.00. The Tenant paid a security deposit of $200.00.

The Tenant testified and submitted that he had been locked out of the rental unit by the property manager for the Landlord on July 1, 2012. The Tenant alleges the property manager changed the locks. The Tenant testified that the property manager claimed he had not paid his rent of $400.00 for that month. The Tenant has testified and submitted evidence that his rent was paid for by a ministry of the provincial government and is paid directly to the Landlord.

The Tenant testified that in May 2012, his first rent payment was $375.00 paid by the ministry. The Tenant testified that he would "top up" his rent assistance to meet the required $400.00 per month, however, there is no evidence he paid this additional $25.00 to the Landlord for May.

The Tenant submits that he was locked out of the rental unit by the property manager and on July 3, 2012, the Tenant was allowed back in the rental unit. According to the Tenant the property manager would not give him a key for the new locks.

When the Tenant entered the rental unit he found almost all of his belongings had been removed. The Tenant found some of his personal property in garbage bags at the side of the house. He submits his clothes, bedding, electronics and other property were missing.

The Tenant left the rental unit and called the Landlord and informed the Landlord that he had paid the rent through the ministry and that his personal property had been removed from the rental unit.

On July 4, 2012, the Tenant called the Landlord again and according to the submissions of the Tenant, the Landlord informed him that everything was back to normal and that he should go back to the rental unit and pick up his key. The Tenant returned to the property and got his key from the property manager. He entered the rental unit and found only a futon style bed, which was not his, and his blankets and pillows that appeared to have been ruined because they were thrown out in the rain. The Tenant

also submits that this was when he found the 10 day Notice to End Tenancy on the door of his rental unit.

The Tenant claims the property manager changed the locks on the rental unit three different times. The Tenant testified that he longer felt comfortable or safe going to the rental unit because the property manager had locked him out and then removed all his belongings.

The Tenant claims as follows:

a.	Lost rent for July 2012	400.00
c.	DVD player	30.00
d.	Play Station 3	200.00
e.	DVDs and video games (approximately 16 items)	180.00
f.	Stereo Amplifier	50.00
g.	Birth certificate	20.00
h.	Food stuffs	50.00
i.	Bed, bedding and kitchen start up	359.00
j.	Shaver	30.00
k.	Clothing, jeans, shirts, sweaters	250.00
	Total claimed	**$1,769.00**

In addition to the above, the Tenant has submitted a handwritten statement setting out some of the events at the rental unit. The Tenant writes that this is shared accommodations with other renters. He submits that at the outset of the tenancy everything went well, except he worried that he did not have enough room in his rental unit.

The Tenant states that things started to go bad at the rental unit when he moved in an older 52 inch projection TV. He alleges the property manager told him that the TV or the Tenant had to go. When the Tenant argued that the property manager was not the Landlord, he alleges the property manager got mad at him and cut the speaker wires on the TV. The Tenant refers to this as the property manager “breaking his TV”. The Tenant alleges the property manager wanted him to move into a different room.

In reply, the property manager testified that the Tenant still owed $75.00 for his May 2012 rent, and this is what was indicated on the 10 Day Notice to End Tenancy. The Notice provided in evidence indicates it was given for $75.00 in unpaid rent and was “personally” served on the Tenant on July 2, 2012.

The property manager testified that he had to change the locks on the rental unit because the Tenant lost his keys. The property manager testified that the rental unit was still available for the Tenant throughout July of 2012 and that all of the Tenant's property was still in the room.

The hearing was adjourned on July 26, 2012, as the property manager had alleged the Tenant's property was still in the room. The parties agreed that the Tenant and his Advocate would meet at the rental unit property on July 30, to remove the Tenant's property.

When the hearing was reconvened, the Tenant did not appear, however, his Advocate proceeded as the Tenant's Agent.

The Advocate for the Tenant explained that they had attended the rental unit and found it to be wide open and unlocked. The Tenant informed the Advocate that the only property still belonging to him in the rental unit were two small items, a shelf and a night stand. The Tenant did not feel comfortable taking these as it appeared these were being used by someone else in the subject rental unit. The Advocate for the Tenant explained the Tenant was giving them up to the current occupants and did not want these.

The Advocate for the Tenant testified that it appeared two different people were living in the subject rental unit on July 30, 2012. The Advocate testified that the bedding and pillows were not the Tenants, and due to the impressions on the pillows and bedding it appeared two different people were now using the rental unit to sleep in.

The Advocate for the Tenant explained the Tenant wanted to stand by his earlier submissions for the items and amounts claimed.

In reply, the property manager testified that he had intentionally unlocked the rental unit property because he knew the Tenant and his Advocate were coming on July 30, 2012, as had previously been arranged.

The property manager submits that the Tenant broke his own TV and that the Tenant would often bring his friends to the rental unit late at night to party. The property manager alleged this disturbed the other renters. The property manager alleged the Tenant and his friends would smash up the Tenant's belongings at these parties.

In evidence, the property manager submitted a statement, signed by three people who also live at the rental unit. The property manager acknowledged he prepared the

statement for the three other renters to sign. The property manager testified that he prepared the statement because he was not at the property to see or hear anything.

The statement can be summarized as alleging the Tenant came home every night with friends to party and disturbed the other renters. According to the statement each of the other renters asked the Tenant to cease making noise at night. They each confirm in their joint statement that they saw nobody going into the Tenant's room. They each confirm they saw the Tenant smash his TV and throw it in the garbage. They also confirm the Landlord went to the rental unit every night to give the Tenant a key and this went on for over a week.

The property manager had two witnesses appear. Both of these witnesses had signed the statement referred to above.

The first witness, KW, initially testified that, "... from what he understood...", the Tenant had come to remove his property already. When it was explained to the witness he should only testify as to what he actually saw himself, he testified that the only thing he saw was the Tenant in the lane of the rental unit property with all his things.

KW testified he saw the TV and other stuff in the lane. He testified he did not see the property being put out in the lane. He further testified that no one has been in the rental unit. He testified he was informed by the property manager that the rental unit was going to be occupied by a different renter in September 2012.

Under cross examination by the Advocate for the Tenant, KW clarified that he did not remember when he saw the Tenant in the lane, but felt it was sometime in the beginning of July 2012. He testified he recalled coming down the lane and seeing the Tenant standing there with his property, talking on his cell phone.

The second witness, JM, testified that the Tenant threw everything out. He believed it was in July and he testified he saw the Tenant putting things in the lane and then bringing them back into the rental unit.

I note that the property manager could be heard coaching this witness to say certain things during the witnesses testimony. The property manager explained that it was due to the witness having a limited facility with English. This witness did have trouble understanding and speaking English.

In final submissions, the property manager testified that the Tenant's property was still in his room, that the room was available for the Tenant throughout July and that nobody has taken the Tenant's property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find the Landlord has breached section 31 of the Act by changing the locks on the rental unit without providing the Tenant with means of access in a timely manner.

I find the Landlord breached the Act by either removing the Tenant's personal property without statutory authority to do so, or by failing to protect the Tenant's personal property and thereby breaching a duty of care to the Tenant.

I also find the Landlord breached the Act by failing to provide the Tenant quiet enjoyment of the rental unit.

I give little weight to the evidence provided by the Landlord, the property manager and the two witnesses. The property manager clearly coached the two witnesses in their testimony, beyond the assistance one of them required with English. I find that the property manager told the witnesses what to say during the hearing and prepared these statements for them to sign. I might add the two witnesses are still renters of the Landlord and therefore, have a vested invested in agreeing with the property manager.

Furthermore, the property manager and the two witnesses clearly contradicted their written statements with their oral testimony. For example, all three statements claim that the person giving the statement saw the Tenant smash his TV and throw it in the garbage. Yet during the hearing all three people who gave the statements testified they did not see the Tenant throw this in the garbage, or testified they were not at the rental unit and did not see this.

I find the case of *Bello* v. *Ren*, 2009 B.C.S.C. 1598, Vancouver Registry, as submitted by the Advocate for the Tenant, applies here.

This case holds that under section 91 of the Act, the common affecting landlords and tenants applies in British Columbia. This puts the Landlord in the position of being a bailee at common law and thereby owing the Tenant a duty of care. The case also

explains the legal principle that governs the award of damages in these circumstances. Paragraphs 15 and 16 of the case set out that:

> [15] Section 91 of the *Residential Tenancy Act* provides that: "except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia." Absent abandonment, the Landlord did not have statutory authority to remove Mr. Bello's goods from his apartment. The Landlord was therefore a bailee at common law and owed a duty of care to Mr. Bello. Disposing of Mr. Bello's goods by taking them to the dump, particularly when he knew that Mr. Bello wanted those goods and was trying to retrieve them, is a gross breach of that duty.
>
> [16] The principle of "*restitution in integrum*" governs damages for breach of a baliee's duty of care at common law. In *Ashton v. Strata Corp. VR524*, [1999] B.C.J. No. 2429 (Prov. Ct.), a case of breach of bailment for reward, Dhillon Prov. Ct. J. Wrote:
>
> > [49] The underlying principle in awarding damages is *restitution in integrum* – to place the injured Party in the position he was in before the damage occurred, as best as can be done. In determining the proper measure of damages, the award must be reasonable both to the plaintiff and to the Defendant.
> >
> > [50] The assessment of damages is a question of fact and based on the evidence, with the onus on the Claimant to prove the value of his loss on a balance of probabilities.
>
> [Reproduced as written.]

Section 67 of the Act also sets out that:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Here the Tenant supplied evidence of the value of his losses. He provided examples of the missing items from various websites which sell used goods. I find these examples to be reasonable and not exaggerated. The Tenant also supplied some actual receipts for his property as well. For example, he provided a receipt from the ministry showing the value of the bed and bedding he received.

I find that by preventing the Tenant from entering the rental unit and by removing his property, or by allowing someone else to do so, without legal authority to do this, the Tenant suffered a total loss of quiet enjoyment for the month of July and therefore, I order the Landlord to return the rent for this entire month.

It is also clear from the evidence provided that the Tenant did not owe the Landlord $75.00 in rent. The Landlord or the property manager erred in issuing the 10 day Notice to End Tenancy in this amount. It is clear from the documents that the Tenant received from the ministry that the Tenant failed to pay $25.00 in May of 2012. Therefore, I will reduce the amount of July rent recovered by the Tenant by $25.00. Following this adjustment, I find that the Landlord is not owed any other rent by the Tenant.

Based on all the above, I find the Tenant has established a total monetary claim of **$1,744.00**. I grant and issue an order in these terms for the Tenant. This order may be enforced in the Provincial Court.

I also direct the Landlord to immediately return to the Tenant his security deposit of $200.00. The Landlord has not filed a claim against the security deposit and there is no evidence condition inspection reports were performed. Without making any binding determination on this particular issue, it is likely that the Landlord extinguished any right to claim against the deposit. The Tenant and his Advocate confirmed during the hearing that the address on his Application was his forwarding address for mail.

If the Landlord does not repay the Tenant the security deposit within 15 days of receipt of this decision, the Tenant has leave to apply for double the security deposit, in accordance with section 38 of the Act.

Conclusion

The Landlord breached the Act.

The Landlord must pay the Tenant $1,744.00, pursuant to a monetary order.

The Landlord must also return to the Tenant the security deposit of $200.00 within 15 days of receipt of this Decision or the Tenant may apply for double under section 38 of the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 5, 2012.

Residential Tenancy Branch