



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The landlord's evidence was not timely submitted prior to the hearing; however, the tenant was questioned as to whether she had a chance to examine the evidence or whether she wanted an adjournment of the hearing. The tenant stated that she reviewed the evidence and wanted to proceed. I therefore allowed the landlord's evidence and the hearing proceeded.

The landlord raised no issue with the tenant's evidence.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order?
2. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?

Background and Evidence

The rental unit in question was a manufactured home. The date of tenancy or occupancy was disputed, with the tenant saying she moved in March 2012, and the landlord said he did not remember, but thought the date of occupancy was in February 2012.

Issue of jurisdiction-

The landlord, through his attorney, raised the issue that he does not believe the Residential Tenancy Act applies to this dispute.

The landlord argued that a tenancy was never intended for the following reasons:

- a. The manufactured home was in the tenant's mother's name until earlier this year, at which time the title was transferred to the landlord's name;
- b. Due to this, the landlord was not responsible for the occupancy/tenancy of the tenant;
- c. The tenant's mother begged the landlord to allow her daughter to live in the manufactured home until it was sold;
- d. The tenant knew that she would only be in the home until it was sold and that it was for sale at the time of her occupancy;
- e. The sale process was ongoing throughout the tenant's occupancy;
- f. The monthly payment by the tenant went directly to the bank.

The tenant's position was that this dispute involved a tenancy and that the Act did apply to this dispute.

As to the tenant's application, her monetary claim is as follows:

Reimbursement of last month's rent	\$650.00
Truck repair	\$500.00
Gas	\$252.00
Towing	\$128.80
Missed time @work	\$55.00
Last month's rent	\$1000.00
Total	\$3285.80

Tenant's testimony in support of her application-

Reimbursement of last month's rent-The landlord told her that she could move into the manufactured home and that if he found a buyer, he would give notice for her to vacate. The tenant understood that potential buyers would be looking at the manufactured home, but was never advised that there had been a sale until May 14 or 15, when the real estate agent for the landlord told her to move out.

The tenant never received notice from the landlord that she had to vacate and was told that the utilities were being turned off effective in mid May.

The tenant made payments of \$653.40 for the length of her occupancy, March to May 2012. The payments included utility costs, the bills for which were in the landlord's

name and that she is entitled to be reimbursed the last month's rent due to the landlord's forcing her to move.

Rent compensation on new rental-As the landlord failed to give a proper 2 Month Notice to End Tenancy for Landlord's Use of the Property, the tenant was entitled to receive the rent difference on her new home.

Truck repair; gas; towing; missed time off work-As the landlord forced the tenant to move, he was responsible for her truck breaking down while moving, towing due to the truck breaking down, gas for the move of her personal property and missed time to deal with the move.

Last month's rent-When question about this claim, the tenant explained that the sum was for the security deposit and pet damage deposit on her new rental unit.

Landlord's response-

The landlord agreed that no written notice was provided to the tenant; however the landlord was not obligated to compensate the tenant as the plan all along was to sell the manufactured home, of which the tenant was well aware.

The landlord was unsuccessful in reaching the tenant by telephone, so he called the tenant's mother and informed her to tell her daughter to vacate the premises.

The landlord denied turning off the power to the manufactured home in May.

The landlord's relevant evidence included conveyance papers for the sale of the manufactured home.

Analysis on Jurisdiction

In order for me to make a decision on the tenant's application, I must first decide the issue raised by the landlord, that this dispute is excluded from the jurisdiction of the *Residential Tenancy Act* due to his contention that a tenancy never existed.

In considering whether or not a tenancy existed, under the Act, a landlord is defined as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord who permits occupation of the rental unit under a tenancy agreement.

Similarly a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Rent is money paid or value given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit.

In the circumstances before me, I find that the landlord was the owner of the home in question at the time he allowed the tenant to occupy and that value was given on behalf of the tenant for the right to possess the rental unit in the form of rent payments.

Therefore, upon a balance of probabilities, I accept that the parties had entered into a verbal tenancy agreement, the rights and obligations of which are enforceable under the Residential Tenancy Act.

Analysis on tenant's monetary claim

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove upon a balance of probabilities four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I do not accept the tenant's argument that she is entitled to compensation equivalent to a month's rent due a tenant if the tenant had received a 2 Month Notice to End Tenancy for Landlord's Use of the Property, as the landlord did not issue to the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

However, I find the landlord has breached some sections of the Act.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment, meaning reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit. I find that the landlord has not provided the tenant with her right to quiet enjoyment by depriving the tenant of exclusive possession, since mid May 2012, and that a reasonable amount of compensation is reimbursement of \$650.00 for May, the amount the tenant paid.

As to the tenant's claim for further rent compensation, such as the equivalent of 2 months' rent in the event a landlord does not use the rental unit for the stated purpose, I do not find the tenant is entitled to this amount, again due to the tenant not having received the Notice.

However, Residential Tenancy Branch Policy Guideline 16 suggests that a dispute resolution officer may award "nominal damages," which are a minimal award. These

damages may be awarded where the burden of proof of a significant loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

I find there was an infraction of the tenant's legal rights when the landlord's agent forced the tenant to vacate the rental unit. I find the tenant is entitled to an award of nominal damages due to the landlord's depriving the tenant of access to the rental unit and exclusive use and possession.

I find a reasonable amount of nominal damages to the tenant for suddenly having to find suitable alternative accommodation without notice to be \$600.00, the value of one month's rent. I note that monthly rent was \$650.00; however from this amount I have deducted \$50.00, for an approximate, reasonable amount paid for the utilities.

As to the tenant's claim for a truck repair, gas and towing and time off work, the dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for any costs which may be incurred which are related to choices made by the tenant.

Therefore, I find that the tenant may not claim these costs, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss the tenant's claim for \$935.80 for truck repair, gas, towing, and missed time off work, without leave to reapply.

Conclusion

I find the tenant has established a total monetary claim in the amount of \$1250.00, comprised of reimbursement of the rent for May for \$650.00 and \$600.00 for depriving the tenant of exclusive possession of the rental unit for the following month, causing the tenant to find suitable alternate accommodations on short or no notice.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1250.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: August 27, 2012.

Residential Tenancy Branch