



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC , MNSD,

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and the return of the security deposit paid.

Both parties appeared and gave testimony.

Issue(s) to be Decided

- Is the tenant entitled to receive a monetary order for damages and loss?
- Is the tenant entitled to the return of the security deposit?

The burden of proof is on the applicant.

Background and Evidence

The tenant testified that the tenancy began on May 9, 2012, the rent was set at \$500.00 per month. The tenant testified that she paid the landlord \$700.00 in cash when she moved in, \$450.00 of which was the rent for the remaining portion of May 2012 and \$250.00 extra, which was later refunded by the landlord. The tenant testified that a security deposit of \$250.00 was paid, on her behalf, directly by the Ministry to the landlord and this amount is still being held in trust as a deposit.

The tenant testified that, during her tenancy in May 2012, the landlord had persistently interfered with her quiet enjoyment of the suite. This conduct included frequently banging on the door, monitoring her activities and guests, using foul-language and threats and entering the rental unit at will whenever the tenant went out. The tenant testified that an incident occurred on May 23, 2012 in which the landlord physically accosted her in a violent rage and ordered her out of the unit. The tenant testified that, the landlord was apparently furious because the tenant's rent was paid by a cheque from the Ministry, instead of in cash. The tenant testified that the police were called to ensure her safe departure an official report was made. The tenant testified that she was

forced to find another place to stay, at a cost of \$179.20. The tenant stated that she had no choice but to leave her possessions in the unit. The tenant is claiming compensation for the cost of lodging and food and submitted a copy of the hotel invoice into evidence. The tenant stated that she had not been able to take all of her groceries with her.

According to the tenant, when she returned to retrieve her possessions, she found that the landlord had thrown all of her valuables outside, including:

- a television worth \$150.00,
- Wii gaming equipment worth \$200.00,
- books worth \$65.00,
- a DVD player worth \$35.00
- a laptop computer replacement value of \$800.00,
- décor items including an angel collection and candles worth \$62.00

The tenant stated that personal mementos were destroyed by the weather and the forceful removal. The tenant testified that rainfall caused irreparable damage to the above items, all of which were relatively new. The tenant testified that her property was not stored in a secure place by the landlord and was merely left in a heap outside in the rain. The tenant is claiming compensation of \$1,312.00 for the replacement value of these ruined items. The tenant testified that she had to pay a friend gas money to assist her in gathering up her things and leaving the area and she is seeking reimbursement for the \$20.00 moving costs.

In addition to the above claims, the tenant feels that she is entitled to a rent abatement of 100% of the \$450.00 funds paid for the month of May 2012, due to the complete loss of quiet enjoyment she suffered because of the landlord's ongoing interference. The tenant is seeking the full return of her \$250.00 security deposit.

The tenant's total claim amounts to \$2,204.20, plus nominal compensation for loss of food products that she had purchased just prior to the incident on May 23, 2012.

The landlord testified that the tenant's version of what had occurred was not true. The landlord stated that he reacted to an associate of the tenant's apparently kicking his door and this occurrence prompted him to effect an immediate end to the tenancy. The landlord acknowledged that he forcibly removed the tenant's possessions on May 23 or 24th, 2012, but positioned them neatly under a canopy out of the rain. According to the landlord, absolutely nothing belonging to the tenant was damaged. The landlord acknowledged that he did not issue any Notice to End Tenancy, did not obtain an Order of Possession, nor did he apply for a Writ from the Court, but evidently felt justified in

terminating the tenancy in the manner he did. The landlord stated that he had returned the tenant's rent payment cheques back to the Ministry.

The landlord agreed that the tenant was likely entitled to the return of rent for the final week of May 2012, in the approximate amount of \$100.00, or in the alternative, the actual cost of her hotel. The landlord did not agree that the tenant was otherwise entitled to any compensation at all and again pointed out that none of the tenant's property had been damaged. The landlord admitted that he was not familiar with the landlord's obligation to properly secure and safely store any property left in the unit by the tenant after a tenancy ends, but he felt that the items were adequately protected.

Analysis

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a party does not comply with this Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

I find that the Act provides that a tenancy remains in effect until such time it ends under section 44 of the Act. Before a landlord can validly end a tenancy for unpaid rent, or any other reason, the landlord must first:

- Issue and serve the tenant with a Notice to End Tenancy based on one of the valid reasons listed under sections 44 to 53 of the Act.

- If the tenant then refuses to vacate the rental unit pursuant to the Notice, the Act requires a landlord to then make an application for dispute resolution, to obtain an Order of Possession pursuant to section 55 of the Act.
- Following this, the landlord must serve the Order of Possession on the Tenant.
- Should the tenant not comply and remain in possession of the rental unit after service of the Order of Possession, the landlord would then be required to make application and obtain a Writ of Possession issued under the B.C. Supreme Court Civil Rules.. This is pursuant to section 57(2) of the Act.
- To enforce the writ the landlord must utilize the services of a registered bailiff to change the locks and remove the tenant's belongings.
- With respect to a tenant's personal belongings, the landlord would be required follow due diligence in safely storing any abandoned belongings in a secure place and not confiscate or dispose of them, except in accordance with Part 5 of the Residential Tenancy Regulation.

In this instance I find the landlord failed to follow any of the above statutory provisions contained in the Act or the Regulations. I find that no Notice to End Tenancy was ever issued, no Order of Possession was ever obtained by the landlord with respect to this tenancy and no Writ of Possession was granted by the Court authorizing the landlord to physically take possession of the unit and evict the tenant against her will.

I find as a fact that the tenant was occupying the rental unit at the time the landlord chose to remove the contents of the rental unit. Notwithstanding the fact that the landlord felt that tenant or her associate had disturbed the landlord in contravention of the Act by allegedly kicking the landlord's door, I find that the landlord was still not entitled to retaliate by circumventing the Act in forcefully taking possession without following due process.

Given the evidence before me, it is clear that the tenant did not willingly abandon the unit nor her personal property in the unit. I find that the tenant still had legal possession of the unit, and the tenant's belongings were wrongfully removed by the landlord in blatant contravention of the Act. In this respect, I find that the landlord would therefore be liable for any damage or loss that resulted from the landlord's violation of the Act.

Based on the testimony, I find that the landlord also wilfully contravened several other sections of the Act including section 28, tenant's right to quiet enjoyment; section 30, tenant's right of access; and section 29, landlord's right to enter rental unit restricted.

In addition to the above violations, I find that section 26(3) of the Act states that, , a landlord must not: (a) seize any personal property of the tenant, or; (b) prevent or interfere with the tenant's access to the tenant's personal property.

Even in cases where a tenant *has* willingly chosen to abandon the rental unit, the landlord would still be required to comply with section 25 of the Residential Tenancy Regulations with respect to the tenant's property. This section states that the landlord must store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal and keep a written inventory of the property. Moreover, section 30 of the Regulations states that the landlord owes a duty of care to the tenant when dealing with a tenant's personal property and must exercise due diligence and caution as required by the nature of the items to ensure that the property is not damaged, lost or stolen.

Therefore, by assuming the right to take charge of the tenant's property, I find that the landlord's treatment of the tenant's possessions was not consistent with the duty of care obligations specified in the Regulations.

Having found that the tenant met elements 1 and 2 of the test for damages, I find that element 3 of the test must also be satisfied by proof of the value of lost items to support the amount of damages being claimed. I find that the tenant's list of missing items does not hold the same evidentiary weight that actual documentation, such as receipts for the original purchases, would have. However, I find that the tenant has attempted to the best of her ability, under severe circumstances, to furnish verification of value in order to satisfy the burden of proof she carries. In this case, the tenant explained that she could not provide records due to the manner in which she was evicted, and that, since her loss of the unit, she has been living in a vehicle. I accept this testimony as a fact.

Based on the evidence before me, I do accept that the tenant suffered a loss of property stemming from the landlord's multiple violations of the Act and the tenant did, or will, incur the claimed expenses to replace her household effects as a result of this.

Accordingly, I find that the \$1,312.00 value of estimated by the tenant for the damaged property is well-within the minimum amount considered as reasonable for a person to relocate without notice and set up a similar household. Accordingly I find that the tenant is entitled to monetary compensation for the loss of her property in the amount of \$1,312.00 as claimed.

In addition to the above, I find that the tenant is entitled to an abatement of rent for May 2012 in the amount of \$300.00 for loss of quiet enjoyment of her suite from May 9, 2012 until May 22, 2012, prior to the incident that ended the tenancy on May 23, 2012. With respect to the tenant's costs for accommodation from May 23, 2012 until the end of May

2012, I find that the tenant is entitled to be reimbursed for the cost \$179.20 for the room rental and \$10.00 a day for seven days for food, for a total of \$249.20.

I find that the tenant is also entitled to be reimbursed the moving costs of \$20.00.

With respect to the return of the tenant's security deposit, I find that a landlord always holds these funds in trust on behalf of the tenant. Pursuant to section 38 of the Act, the landlord has no right to retain the security deposit after the tenancy ends without making an application and obtaining an order to keep the deposit in compensation for damage or loss pursuant to section 7(1) and section 67 of the Act. Therefore, as this tenancy has permanently ended, I find that the landlord must also return the tenant's \$250.00 security deposit to the tenant forthwith.

The total compensation to which the tenant is entitled is \$2,131.20 including \$1,312.00 for damaged property, \$300.00 rent abatement for loss of quiet enjoyment during the first portion of May 2012, \$249.20 for food and accommodation for the final week of May 2012, \$20.00 in moving costs and the return of the tenant's \$250.00 security deposit paid on her behalf.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation from the landlord in the amount of \$2,131.20.

I hereby issue a monetary order in favour of the tenant for \$2,131.20. The order must be served on the landlord in person or by registered mail and, if unpaid, may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if necessary.

This decision is final and binding and 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 14, 2012.

Residential Tenancy Branch