Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, AAT, O, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of the security deposit, for money owed or compensation under the Act or tenancy agreement, to allow access to the rental unit for the Tenant, and for the recovery of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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

During the course of the hearing the Tenant testified that he had all his personal property now and did not require access to the rental unit any longer. Therefore, I dismiss that portion of the Tenant's claim, without leave to reapply.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Has there been a breach of the Act or tenancy agreement by the Landlord?

Background and Evidence

This tenancy began in September of 2011, with the parties agreeing to monthly rent of $800.00, payable on the first day of the month. The rental unit is a self contained apartment in the basement of the Landlord's residential home.

The Tenant testified that he paid the Landlord a security deposit of $800.00 in several installments during the first months of the tenancy. The Landlord disputes this and provided in evidence an accounting of the amounts the Tenant paid. Based on these accounts, the Landlord submits the Tenant paid a security deposit of $400.00.

The Tenant testified he did not provide the Landlord with a written notice of the forwarding address to return the security deposit to. The Tenant testified that the Landlord knew his post office box number and where he worked, and should have returned the deposit to him.

The Tenant testified that the Landlord did not perform an incoming condition inspection report. The Tenant further testified that the Landlord did not perform an outgoing condition inspection report. The Landlord did not dispute this.

On or about July 27, 2012, a flood occurred in the rental unit. The Tenant did not enter the rental unit, although he informed the Landlord of the flood. According to the submissions of the Landlord, the Tenant asked her not to enter the rental unit until the Tenant returned home, explaining she would be upset.

The Landlord entered the rental unit and alleges the rental unit looked like a motorcycle repair shop. The Landlord alleges the Tenant had two motorcycles in the rental unit and parts and tools to perform repairs.

The Landlord testified she wanted the Tenant to remove the motorcycles and equipment in order for her to make sure the rental unit was clean and dry, and to prevent mould. According to the submissions of the Landlord the Tenant removed one of the motorcycles, but nothing else.

The Tenant testified that he used a shop vacuum to remove the water from the rental unit and had a fan blowing to dry it out. He testified it was all dry in a week.

The Landlord testified and submitted that on August 8, 2012, she posted a notice to end tenancy on the door of the rental unit giving the Tenant until September 8, 2012 to vacate the rental unit.

The Landlord did not use the approved form provided by the Branch and required under the Act to end the tenancy.

The Landlord gave the Tenant a document titled "Notice to End Tenancy", and submitted a copy of this in evidence. This notice cites two different sections of the Act, but does not provide the Tenant with the substantial information provided on the approved form, such as the Tenant's rights to dispute the notice. Furthermore, the Landlord has not correctly calculated the effective end date of the tenancy, as a valid notice of this type would not be effective until September 30, 2012, if given on August 8, 2012.

The Tenant also testified that the notice put into evidence by the Landlord was not the same as had been posted on his door.

The Tenant testified he informed the Landlord the notice she had given him was not valid. The Landlord testified that the Tenant told him she should give him a valid form and give him two months notice.

On September 5, 2012, the Landlord posted a note on the door of the rental unit informing the Tenant she was entering the rental unit "… from September 7 to prepare for carpet replacement or cleaning tests." The Landlord informs the Tenant in the letter that the premises must be vacated before noon on September 8, 2012, and "… contents left behind will be moved onto the driveway temporarily, at your own risk." The Landlord informs the Tenant that, "Suite will be shown to others after Sept. 8, 2012 or occupied by myself after Sept. 8, 2012. Locks will also be changed." [Reproduced as written.]

The Landlord agrees she removed the Tenants property from the rental unit without an order from the branch or writ of possession, and without the Tenant being present. She testified she thought the tenancy had ended on September 8, 2012, with the notice she had given the Tenant.

When the Tenant arrived at the rental unit, after being away for a few days, he was upset with the Landlord. The Tenant asked the Landlord to call the police. The Tenant testified he did not know what the Landlord told the police; however, when they attended they had an attitude against him from the outset. He alleges the Landlord told the police that the Tenant told her he was going to take one of the police officers guns, or made other prejudicial statements to the police about him.

The Tenant testified he explained to the police that the Landlord was in breach of the Residential Tenancy Act and had illegally evicted him and his belongings. He testified that the police told him to leave the rental unit and to not come back or they would arrest him.

The Tenant claims that the Landlord damaged his personal property when she removed it from the rental unit. He alleges his mattress was damaged by rain. He further alleges that bottles of dish soap and shampoo were packed upside down in the boxes and leaked out, which damaged his clothes in one box and personal papers in another. The Tenant also testified the Landlord did not return his wireless wi-fi router and damaged wires for his stereo and computer equipment.

The Tenant claims for losses and damages in the amount of $4,999.00, plus the filing fee for the Application.

The Landlord agrees that a light stand was bent, a glass got broken and that she did not return the Tenant's router. She denies packing soaps upside down and says she carefully packed up all the Tenant's property and put it inside a storage shed and in a small utility trailer, and covered the trailer with a sheet of plywood. The Landlord went to the Tenant's place of employment on September 28, 2012, to deliver the Tenant a letter informing him his personal property was stored in the shed, must be removed and that she was no longer responsible for the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached the Act and tenancy agreement as follows.

I find the Landlord breached sections 24 and 36 of the Act, by failing to perform condition inspection reports. Under these sections of the Act, the Landlord has extinguished any right to claim against the deposit for damage. Based on the accounting provided by the Landlord, and in the absence of receipts or other evidence from the Tenant, I find the security deposit paid was $400.00. I order the Landlord to return **$400.00** to the Tenant. I do not order the Landlord to pay double the deposit, pursuant to section 38 of the Act, as I find the Tenant did not provide the Landlord with the forwarding address in writing, as required under section 38 of the Act.

I find the Landlord breached section 52 of the Act, by failing to provide the Tenant with a notice to end tenancy in the approved form and that the deviations from the approved form affected the substance of the form and were likely intended to mislead the Tenant

as to his legal rights. Therefore, I find the Landlord did not end the tenancy in accordance with the Act.

I further find the Landlord had no right or authority under the Act to remove the Tenant's property from the rental unit. Even if the Landlord obtained an order of possession through making an Application to the branch (which did not occur), the Landlord is prevented from taking actual possession of the rental unit unless a writ of possession has been issued by the British Columbia Supreme Court, pursuant to section 57 of the Act. There was certainly no claim made by the Landlord that the Tenant abandoned the property. Based on the evidence before me and the demeanour of the Landlord during the hearing, I find that the Landlord's actions in this regard were highhanded and willfully ignorant of the proper steps to be taken. I find it most likely the Landlord simply decided to take the law into her own hands and act without regard to due process.

Section 67 of the Residential Tenancy Act states:

> 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.

I find these actions of the Landlord caused the Tenant to suffer a total loss of quiet enjoyment in the rental unit for the period from August 8 to September 30, 2012, which is a breach of section 28 of the Act, and I order the Landlord to pay the Tenant the sum of **$1,200.00**, equivalent to a month and a half of rent payable under the tenancy agreement.

As to the Tenant's claims for damage to his property, I find the Tenant has supplied little evidence in regard to the actual value of the items claimed for. Therefore, in this instance I am guided by the case of *Bello* v. *Ren*, 2009 BCSC 1598, Vancouver S086161, in which the court examines a landlord as bailee for the tenant's property in that particular case:

> [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 "*restitutio 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 restitutio 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.
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> [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.

[17] All circumstances should be taken into account in arriving at a value for the lost goods, as set out in *Hislop Estates v. Western Oil Services Ltd.,* [1978] 2 W.W.R. 632 (B.C.S.C.):

> [24] The principles which I refer to are to be found in a leading decision of the Supreme Court of Canada in *Can. Nat. Fire Ins. Co. v. Colonsay Hotel Co.*, [1923] S.C.R. 688, [1923] 2 W.W.R. 1170, [1923] 3 D.L.R. 1001. This case establishes that the measure of the value of a loss to property is not necessarily its "replacement value" or its "market value", but rather its "actual value": see Anglin J. at p. 694. This point may be stated in another way as the "pecuniary loss" suffered by the plaintiff as a result of the destruction of a building: see *Matergio v. Can. Accident & Fire Assur. Co.*, 58 N.S.R. 415, [1926] 1 D.L.R. 1002 (C.A.), applying the *Colonsay Hotel* decision, *supra.* In *Ziola v. Co-op. Fire and Casualty Co.*, [1976] 6 W.W.R. 159, [1977] I.L.R. 2838 (Sask.), Disbery J. said that neither replacement cost less depreciation nor market value is a conclusive test for finding "actual cash value" and, while such evidence was admissible, the values so arrived at were to be considered along with all other evidence tending to show "actual cash value".
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> [25] Other decisions indicate that the court is not confined to replacement cost or market value but rather is at liberty to use the most appropriate indications of value having regard to all the circumstances which show the value to the plaintiff of the property which is lost or damaged. I refer to *Stevens v. Abbotsford Lbr. Co.*, 33 B.C.R. 299, [1924] 1 W.W.R. 660, [1924] 1 D.L.R. 1163 (C.A.); *Dredger "Liesbosch" v. S.S. "Edison*", [1933] A.C. 449 at 459 (sub nom. *The "Edison*") (H.L.), per Lord Wright, and *Leger v. Royal Ins. Co.; Leger v. Home Ins. Co.,* 1 N.B.R. (2d) 1, [1968] I.L.R. 1-207, 70 D.L.R. (2d) 344 (C.A.) [Underlining added].

> [18] In summary, at common law damages are awarded to put the injured bailor in the position he was in before the goods were lost or damaged. In the absence of contract, the most the bailor can recover is replacement cost or repair cost. However, account must be taken of all the circumstances, especially when accurate information is not available. Sometimes market value must be used, and sometimes intrinsic value. “Betterment” must be accounted for when replacing old items with new ones.
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> [Reproduced as written.]

In taking into account the circumstances before me, where accurate damage information is not available although the Landlord breached their duty of care to the Tenant, I find the Tenant is entitled to a nominal amount for damage to his property in the amount of **$250.00.**

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **$1,900.00**, comprised of $400.00 for return of the security deposit, $1,200.00 for loss of quiet enjoyment, $250.00 for damage to property and the $50.00 fee for filing this Application.

Conclusion

The Landlord committed several breaches of the Act when she wrongfully evicted the Tenant.

The Tenant is granted a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as 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 *Residential Tenancy Act*.

Dated: December 21, 2012.

Arbitrator
Residential Tenancy Branch