



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for an Order for the landlord to return the tenants personal property.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on November 30, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant and the tenants agent appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to return the tenants personal property?

Background and Evidence

The tenant's agent testifies that this tenancy started on July 01, 2012 and ended on November 29, 2012 after the landlord received an Order of Possession for unpaid rent at a hearing held on November 22, 2012. The tenants agent testifies that the tenant never actual moved into the unit but did move her belongings in as the landlord had not completed the renovations to the rental unit

The tenant's agent testifies that at the previous hearing the landlord agreed to allow the tenant time to remove her goods and that is why the Order of Possession was dated for November 29, 2012. The tenant and the tenant's agent rented a moving truck on this date at 8.35 a.m. and at 9.30 a.m. the tenant and landlord had a telephone conversation where the landlord refused to allow the tenant to remove her belongings until the landlord had the money the tenant was ordered to pay at the previous hearing. The tenant's agent testifies that the landlord has not yet served the tenant with the Monetary Order.

The tenant's agent testifies that they went to the Residential Tenancy Office to file the application for this hearing and then went to the rental unit arriving about 1.00 p.m. The landlord was not present but the landlords wife was. The tenant found she could not gain access to the rental unit as the landlord had locked the unit from the inside. The tenant's agent spoke to the landlord by telephone and requested access to remove the tenant's belongings. The tenant's agent testifies that the landlord again refused the tenant access to the rental unit.

The tenant's agent testifies that since October 06, 2012 the landlord has had a lock on the inside of the rental unit door to prevent the tenant gaining access to the unit and the tenants belongings. The tenant's agent states the tenant has not abandoned her belongings but has been refused access to them since October 06, 2012. The tenant seeks an Order for the landlord to allow the tenant access to her belongings to remove them on Thursday January 31, 2013 between 8.00 a.m. and 6.00 p.m. this will allow the tenant time to rent another moving truck and organise friends again to help her remove her belongings

The tenant also seeks to recover the costs for the moving truck hired to remove the tenant's belongings on November 29, 2012. The tenant has provided a receipt for this moving truck showing an amount of \$99.98 was paid.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me of the tenants agent.

I have reviewed the previous decision as provided by the landlord in documentary evidence. In that decision it was stated that the landlord agreed to allow the tenant access to remove her belongings and the Order of Possession was dated for November 29, 2012. This means that the tenant remained in possession of the rental unit until that date. I am satisfied with the testimony before me that the landlord has prevented the tenant from accessing the rental unit on October 06, 2012 and again on November 29, 2012 by locking the rental unit from the inside. A landlord is not entitled to hold the tenants belongings to force a tenant to pay a Monetary Order particularly when the landlord has not yet served the Order upon the tenant.

The tenant has applied for the sum of \$9,407.00 for the cost of her belongings that the tenant has been unable to access. However, I find it is appropriate at this time to issue the tenant with an Order for the landlord to return the tenants personal belongings. To this affect I dismiss the tenants claim for a Monetary Order for \$9,407.00 with leave to reapply in the event the landlord does not permit the tenant to retrieve her belongings or if the landlord has disposed of the tenants belongings. The tenant has requested time to organize another moving truck and friends to help move and to this affect I Order the landlord to permit access to the rental unit on January 31, 2013 for the tenant to remove her personal belongings.

I am satisfied that the tenant incurred a loss of \$99.98 when the tenant hired a moving truck to remove her belongings while still in possession of the rental unit. As the landlord refused access to the tenant's belongings at this time I find it is appropriate for the tenant to recover this cost from the landlord. Consequently, I find the tenant is entitled to a Monetary Order to the sum of **\$99.98** pursuant to s. 67 of the *Act*.

Conclusion

A Monetary Order in the amount of **\$99.98** has been issued to the tenant and a copy of it must be served on the landlord. If the amount of the order is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

I HEREBY ORDER the landlord to return the tenants personal belongings and allow access to the tenant's belongings on January 31, 2013 between 8.00 a.m. and 6.00 p.m.

The tenant's application for the cost of her personal belongings is dismissed with leave to reapply in the event the landlord does not return the tenants personal belongings.

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: January 09, 2013.

Residential Tenancy Branch

