



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0788859 BC Ltd -A-1 Self Storage
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR,

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on March 4, 2013 with an amendment made March 26, 2013 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the Landlord to comply with the Act, regulation or tenancy agreement – Section 62;
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 12, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

At the onset of the Hearing commenced on April 2, 2013, the Parties confirmed that the tenancy has ended and that the Tenants have moved out of the unit as of March 14, 2013. The Landlord withdrew the claims for the order of possession and unpaid rent. The Landlord stated that they have a claim for \$120.00 for cleaning of the unit and the Tenants had no objection to the Landlord making this claim under their current

application. Accordingly, I amended the Landlord's application to include a claim for damages to the unit.

The Landlord stated that the Tenant's 51 pages of evidence had not been received. The Tenants stated that the package was sent to the Landlord by registered mail and was confirmed by the tracking number that the item was picked up on March 28, 2013. The Tenants stated that this package was mailed to the Landlord's business address. The Landlord stated that they were unaware that anything was received at this address and requested an adjournment to review this evidence and make submissions if necessary. The Tenants did not dispute the adjournment. I therefore adjourned this hearing to be reconvened to today's date, May 6, 2013.

As the tenancy has ended, the Tenants confirmed that the only claims they raise now are in relation to compensation for damages and return of the filing fee.

Issue(s) to be Decided

Are the Tenants entitled to the amounts claimed?

Is the Landlord entitled to the amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on August 15, 2012 and the Tenants moved out on March 15, 2013. Rent of \$350.00 was payable monthly and no security deposit was taken by the Landlord. The Landlord states that a move-in inspection was done and a copy sent to the Tenants. The Tenants state that no move-in inspection was done and no copy received. The Landlord states that no move-out inspection was done as the Tenant's left the unit without informing the Landlord before the end of their tenancy of March 31, 2013 and the Landlord had no contact with the Tenants other than through email. The Landlord states that no request was made for a move-out inspection and none was completed. The Landlord states that the Tenants failed to clean the unit at move-out and claim \$120.00 for the cost of cleaning the unit. The Tenants state that the unit was

clean at move-out. The Landlord did not supply a copy of either a move-in or move-out condition report and no photos of the unit.

The Tenant states that the Landlord removed their access to their storage locker for the first two weeks of March 2013 and that as a result, the Tenants incurred losses. The Tenants state that they signed a tenancy agreement for a new tenancy to start on March 1, 2013 and had lined up friends to assist with their move however since the Tenants could not retrieve their belongings from their storage locker and as the Landlord would not allow these persons on the property, they had to forgo the free help at the beginning of the month and had to delay their move.

The Tenants state that in the first week of March 2013, the Landlord did not allow them access to another area that was used during their employment to dispose of articles. The Tenants state that due to inclement weather that occurred during their employment, they used their truck to load articles for disposal in that other area. The Tenants state that as they could not access the disposal area and unload their truck, they could not use their truck to move out of their unit. The Tenants state that they had to rent a truck to dispose of the items from their truck.

The Tenants state that they used the rental truck and their truck to move their belongings out of the unit and into storage over March 13 and 14, 2013. The Tenants state that they had to pay for a month of storage as they did not have time to sort through their belongings that had been stored due to the Landlord locking them out of the storage. The Tenants state that they had to stay in a motel for three days in March 2012 due to the stress caused by not being able to access their stored goods and having to move late. The Tenants state that they could not use their new rental unit as it had no furniture. The Tenants state that they had packing boxes in their storage and that as they could not access them they were required to purchase new boxes for their move. The Tenants claim the cost of the rental truck, gas, locker rental, casual labour, hotel rooms, packing boxes and food from Tim Hortons. The Tenants also claim an amount to compensate them for the loss of access for two weeks.

The Tenants also claim losses in relation to their employment and the Landlord's withholding of their last paycheck. The Tenant states that the Landlord kept a ½ cord of wood that was the Tenants personal property but had been stored in their employer's locker and used on occasion in their employment. These costs are in relation to the disposal of garbage, monies borrowed, the wood and time spend unloading their employer's garbage.

The Tenants state that they were concerned that the Landlord would stop them from obtaining their mail as the previous managers had been picking up and delivering the mail to the Tenants but the Landlord stopped these persons from doing this. As a result the Tenants state that they had to rent a box office and pay for the redirection of their mail. The Tenants claim this cost.

The Landlord states that the storage locker was not part of the tenancy but part of the employment agreement and that this locker was only unavailable from March 7 to 9, 2013. It is noted that the tenancy agreement provides for storage. The Landlord states that the Tenants were informed of the locks being removed and that they were removed the day the police were called. The Tenant states that the police were called on March 13 and the locker was made available the next day. The Landlord states that the Tenants employment ended on March 2 and that all employment keys were returned on March 3, 2012. The Landlord states that the Tenants were not required to vacate their unit until the end of March 2013 and not by March 15, 2013. The Landlord states that the Tenant's friends were never refused access to the property but were only warned in relation to blocking access when parking. The Landlord states that the Tenants never asked for the wood and that the Tenants are free to pick this wood up any day between Monday and Saturday inclusive and between 9-5:00 p.m.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage

or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. AS the Landlord did not provide a move-out condition report or any photos of the unit and considering the Tenant's evidence that the unit was cleaned at move-out, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants left the unit unclean. I dismiss this claim of the Landlord. As the Landlord has not been successful with its claim, I decline to award recovery of the filing fee.

As damages arising from employment are not matters provided for under the Act, I dismiss the Tenants' claims for in relation to the disposal of garbage and truck rental, monies borrowed, the wood and time spend unloading their employers garbage.

Given the Landlord's evidence that the Tenants were locked out of their storage, and accepting that this storage was included with the tenancy, I find that the Tenants have substantiated that the Landlord caused a loss. However, given that the Tenants had another rental unit for use, accepting that the Tenants had to the end of March 2013 to vacate the unit, had the use of their own truck for their move and considering that expenses, including forwarding mail costs would be reasonably be incurred regardless of the date of the move, I find that the Tenant has only substantiated a nominal amount for loss, inconvenience and stress in the amount of **\$150.00**. given the Landlord's evidence that the wood is the Tenants and remains available for pick up by the Tenants but noting the Tenants' lack of trust in the Landlord, I order the Landlord to ensure that the Tenants have access to their storage on or before 7 days receipt of this decision.

As the Tenant's application has met with some success, I find that the Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$200.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **\$200.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 10, 2013

Residential Tenancy Branch