



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Langley Lions Senior Citizens Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

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 to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing and the tenant was permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on July 15, 2012. Rent for this unit was \$622.00 per month however this amount was subsidized for the tenant to an amount of \$460.00. The tenancy ended on April 23, 2013.

The tenant testifies that he had paid his rent for April, 2013 and then on April 03, 2013 a fire broke out in the building and the tenant was evacuated from his unit. The tenant testifies that although his unit was not damaged by the fire there was some smoke damage to the tenant's belongings. The tenant testifies that the tenant was not able to return to his unit after this time and the tenant along with the other residents were put up in a hotel by the landlord. The tenant testifies that he had some restricted access to his unit a week later to recover some clothes and medication. The tenant testifies that due to the fire the tenancy became frustrated and the tenant found alternative accommodation on April 23, 2013. The tenant seeks to recover the rent paid for April from April 03, 2013.

The tenant testifies that when he was able to access his unit to remove medication and clothing the tenant noticed that his fridge and freezer had been emptied. The tenant testifies that on April 16, 2013 the landlord advised the tenant that he would not be able to return home until the first week of June and that all the tenant's belongings would have to be removed. The tenant testifies that he was not given the opportunity to remove the contents of his fridge and freezer and has provided photographs of these contents as provided by an agent of the landlord who did remove these items. The tenant has also provided an inventory of the items in his fridge and freezer. The tenant testifies that many of the items were not perishable and could have simple been left in the unit. The tenant testifies that he also found all of his spices had been removed from a cupboard and thrown in the garbage. The tenant was able to retrieve these items.

The tenant testifies that agents for the landlord removed the contents of the tenants unit into storage. The tenant found that two lamps from the tenant's bedroom and one lamp

from the living room were taken and are missing. A camera was also missing however that was returned later.

The tenant testifies that he had to buy emergency prescriptions because the landlord would not let the tenant enter the unit to retrieve his medication on April 03, 2013. The tenant testifies that as the tenancy was frustrated the tenant moved to a new location and incurred moving costs for this move. The tenant also testifies that he had to pay to have his furniture cleaned due to the smoke damage.

The tenant has provided invoices for the prescriptions, the cleaning costs and the moving costs. The tenant seeks to recover the following amounts:

Aprils rent prorated	\$429.33
Food removed from the fridge	\$439.99
Food removed from the freezer	\$439.00
Moving costs	\$400.00
Cleaning furniture	\$250.00
Three lamps	\$120.00
Emergency medication	\$65.00
Total amount claimed	\$2,143.32

The landlord does not dispute the tenants claim to recover Aprils rent. The landlord testifies that all the tenants were put up in a hotel and received three meals a day paid for by the government out of a fund set aside for incidents such as this. The other affected tenants have all donated their Aprils rent back to this fund to help other tenants experiencing the same mishap. The landlord asks the tenant if he would also like to donate his rent for April to this fund as he had the opportunity to be housed and fed until the tenant was able to return to his own unit. The tenant declines this and states he would still like to have his rent refunded.

The landlord does not dispute that there was fire at the building and the tenants unit was not able to be occupied until June 11, 2013. The landlord testifies that the fire service restricted access to the building for the residents but on the night of the fire the landlord witnessed a fireman asking the tenant what items the tenant needed from his unit so the fireman could enter and retrieve them. The tenant had the opportunity then to ask the fireman to get his medication.

The landlord testifies that the hydro to the building was off for a week. Everything in the fridges and freezers was rotting so the restoration company removed the tenant's food. The Salvation Army came and packed up the tenants belongings free of charge and stored them in a storage locker. The landlord testifies that she has no idea about the missing lamps. The landlord testifies that the tenant was supposed to have been present when his furniture and belongings were removed by the Salvation Army.

The landlord testifies that the tenant had housing in a hotel available until May 05, 2013. This accommodation would have been extended until June 11, 2013. The tenant could have moved back into his own unit or been offered another unit however it was the tenants choice to move to a different location. The tenants belongings would have been returned to the tenants unit free of charge had the tenant wanted to return there.

The landlord testifies that clause 26 of the tenancy agreement refers to a liability waiver and advises all tenants to carry adequate insurance to cover personal belongings. By signing this agreement the tenant waives and releases the landlord from any liability as the landlords were not responsible for the fire.

The tenant testifies that he could not stay in the hotel while all his belongings were in his unit. The tenant explains that he lost his son when he was in his twenties and some of his sons belongings were in the unit which the tenant did not want to be parted from and needed to know that these items were safe. The tenant testifies that he was told he could eat at the ABC restaurants however when he arrived there he was told that his name was not on the list. The landlord had to call the restaurant to sort this out however

the tenant states he barely eat there. The tenant testifies that he was told to buy temporary medications and the fireman did not go into the unit and retrieve the tenant's medication. The tenant testifies that the power was on in the building for two to three hours a day.

The landlord disputes that the power was on in the building other than emergency lighting. The electrician had to lock down all the electrical boxes after the fire.

The landlord cross examines the tenant and asks the tenant if the tenant remembers the fire officer going into the tenants unit on the day of the fire. The tenant responds that he remembers going into the unit with the fire officer on June 05. The landlord asks the tenant if the tenant remembers asking if the tenant could go into his unit through the patio door. The tenant responds no. The landlord asks the tenant if the tenant remembers the fire officer going into the tenants unit with their gear and retrieving what items the tenant wanted. The tenant responds that he does not recall.

The landlord testifies that the fire officers were still entering tenants units to retrieve items such as medications until 10.00 p.m. on the night of the fire. The tenant had the opportunity to request his medication and was allowed to enter the unit with an escort two days after the fire. The landlord testifies that when the tenant was escorted into his unit on April 05 the tenant could have removed the contents of his fridge and freezer then.

The tenant responds that he only had five minutes to remove items and the landlord did not contact the tenant before removing the contents of the tenant's fridge and freezer and disposing of them.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover rent paid for April, 2013 from

April 03, 2013. The landlord does not dispute that the tenant is entitled to recover rent of \$429.33 I therefore find as the tenancy became frustrated due to the fire that the tenant is entitled to recover Aprils rent and a Monetary Order for **\$429.33** was been issued to the tenant.

With regard to the tenants claim for a loss of food from the fridge and freezer; I have considered both parties arguments in this matter and find that both parties have a strong argument. The landlord argues that the food items had to be disposed of because they were going rotten due to the power being off. The tenant argues that he was not given the opportunity to remove these food items before the landlord disposed of them and many of the items were not perishable items. Having considered the list of items contained within the fridge and freezer and reviewed the photographic evidence of the contents of the fridge and freezer I find that many of the items would not have been considered to have been perishable items. It is my decision that the landlord remained responsible to protect the tenant's rights to these items and could have mitigated the loss by escorting the tenant into the unit to remove the food and other items in the fridge and freezer or having had the restoration company remove the items, the tenant should have been given the opportunity to dispose of any rotten items and retrieve any non perishable items. I therefore find in favor of the tenants claim to be reimbursed for items from the fridge and freezer.

The tenant has compiled an inventory of these items however I have no way of determining exactly what was in the fridge and freezer or the comparative cost to replace these items. I must therefore limit the tenants claim to **\$400.00** and a Monetary Order has been issued to the tenant for this amount.

With regard to the tenants claim for moving costs; I am not satisfied that the tenant has shown that he had to move from the rental unit. The landlord and the Province of BC sorted out temporary accommodation and food for the tenant during this period while the tenants unit and building was made habitable again. It was the tenant's choice to find alternative accommodation and to move from the rental unit. Therefore any costs

incurred in moving must be borne by the tenant. I therefore deny the tenants claim for \$400.00 for moving costs.

With regard to the tenants claim for missing lamps and cleaning of furniture; the tenant was advised to get insurance to cover his belongings and had waived any liability towards the landlord for any damage or loss to personal property. The tenant testified that he could not afford insurance of this nature. The tenant argues that this reference to insurance is advice only and not a mandatory requirement of the tenancy. However had the tenant had insurance then the tenant would have been able to make a claim on his insurance to cover his personal belongings that required cleaning or were missing. A tenant cannot now hold the landlord responsible once the tenant has been advised to obtain insurance. As the fault for the fire did not lay with the landlord then the tenant cannot hold the landlord responsible for his belongings other than the food items as previously mentioned.

With regard to the tenants claim for emergency medication; I have considered both arguments in this matter and find I prefer the evidence of the landlord that the fire officers did ask the tenant what items they would like them to retrieve from the tenants unit on the day of the fire. The tenant does not recall being asked by the fire officer what items the tenant wanted them to retrieve however the landlord has testified that she does recall this conversation and if the tenant did not ask the fire officer to get his medication then the tenant cannot now hold the landlord responsible for any emergency medication the tenant had to purchase. I further find that the tenant did gain access to his unit during an escorted visit two days after the fire so in the worse scenario the tenant would have only had to get two days worth of medication. Consequently the tenants claim for \$65.00 is denied.

I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$879.33**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 12, 2013

Residential Tenancy Branch

