



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage of loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenant named 4 respondents on his application. Evidence was supplied showing registered mail service was completed to 2 of the named respondents; F.P and P.P.

The tenant supplied a copy of a land title search for a different property, not the rental unit; which documented 2 owners who were named as respondents on the tenant's application. That document was of no value, as it did not relate to the rental unit property in dispute.

The tenant supplied a copy of a decision (file 777981) issued on September 1, 2011, in which F.P. was found to be the landlord. Therefore, the hearing proceeded with F.P., who was present as the landlord. F.P. confirmed receipt of the hearing package and evidence in September 2013. I have amended the application to name only the individual who was found to be the landlord on September 1, 2011.

At the hearing held in September 2011 the landlord had argued jurisdiction. At the start of this hearing the landlord's agent testified that F.P. had in fact been a tenant who rented out rooms in the home and that in September 2011 she was evicted for non-payment of rent. The tenant supplied evidence of an August 13, 2011 letter issued by F.P. in which she indicated the Act did not apply to shared accommodations. The tenant and 1 other roommate had not paid rent to F.P., which resulted in her inability to pay rent. I explained that I could not alter a previous finding that determined F.P. was the landlord; that F.P. would have needed to apply for review consideration and/or judicial review.

I considered section 60 of the Act; time limitations for applications. As the decision issued on September 1, 2011 provided the tenant with an Order of possession and, as the tenant submitted this application on August 30, 2013, I determined that the application had been made within the required 2 year time-frame.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act in the sum of \$2,951.00?

Background and Evidence

This tenancy commenced in March 2011. Rent for a room was \$400.00 per month, due on the 1st day of each month. The tenant had use of common areas of the house and a room for his personal use. The parties agreed that the tenant had signed a document entitled "Welcome to Our New Family."

The tenant has made the following claim:

Loss of personal property	\$941.00
Wrongful eviction	500.00
Loss of quiet enjoyment	500.00
Emergency shelter	510.00
Aggravated damages	500.00
TOTAL	\$2,951.00

The following facts were not disputed:

- August 2011 rent was not paid;
- On August 15, 2011 the tenant was locked out of his room, the police were called and the tenant was able to regain access to his room; and
- On August 18, 2011 the tenant was again locked out of his room.

The tenant said that on August 15 he could access the common areas of the home but on August 18 he was denied access to the house and his room. When the tenant called the police on August 18, 2013 he was told that they could not intervene and that the tenant must pursue the matter via the Residential Tenancy Branch. The tenant said that he was locked out of the home and was left outside in the pouring rain.

The tenant made an application for dispute resolution and on September 1, 2011 was provided an Order of possession and an Order the landlord provide the keys and access to the unit.

The tenant provided the landlord with a copy of the Order of possession, sent via registered mail and received by F.P. on September 23, 2011. The tenant also attempted to personally serve the landlord at the rental property but the tenant believes the landlord had been evicted or had "disappeared."

Initially the tenant said that he spoke with a professional bailiff, approximately 1.5 years after his eviction. The tenant then said that he contacted the bailiff 6 months after the eviction; the tenant also said that he spoke to a bailiff in October or September 2011

and was told it would cost \$900.00 to obtain possession of the unit. The tenant stated that he had 10 years to enforce the Order.

On September 25 or 26, 2011 the tenant met with a mediation advisor at a justice centre. A copy of very rough notes from that meeting was provided as evidence. The notes indicated that the landlord should be encouraged to provide the tenant access to the room and belongings; the tenant needed a new key. A copy of the mediator's business card was copied with the notes. The tenant said that a meeting was set up with the landlord at 10:30 a.m. on September 25, 2011. The tenant went to the house with a friend, to retrieve his personal property, but the landlord was not there. The tenant attempted to have the police attend, but they refused.

The tenant was on the street for 1 day and then located new accommodation. A copy of receipts issued by the new landlord on August 19 and September 2011 in the sum of \$120.00 and \$380.00 respectively was supplied as evidence.

The tenant supplied a hand-written list of belongings that the landlord disposed of; including:

- \$300.00 – 10 silk ties;
- \$300.00 – 10 dress shirts;
- \$100.00 – 2 pairs pants; plus
- \$241.00 for miscellaneous items such as shampoo, undergarments and a baseboard heater.

The tenant said the landlord kept a box of documents and a box of photographs, which were priceless to the tenant.

The tenant then thought he should have the rental unit inspected. The tenant did not supply any information as to who did this inspection or when it may have occurred; it may have been 1 year later. The tenant was told the rental unit had been completely altered and that his room no longer existed.

The tenant stated it took him 6 months to recover from the eviction; that he had only the clothes he had been wearing. The tenant said that the landlord could not have done anything worse but to lock him out and that on August 18, 2011 the main lock to the house was changed so he could not even access the common areas.

The tenant has claimed damages for the illegal eviction that occurred. The tenant stated that the claim for loss of quiet enjoyment is to compensate the tenant for the 6 month period of time that followed the eviction. The tenant said it took him several months to "regroup" and that the landlord's wilful and reckless behaviour and failure to comply with Act entitles the tenant to aggravated damages. The tenant said the landlord "shattered" his rights.

The agent for the landlord responded that she was an agent for the actual property owner, that she managed repairs and maintenance to the home and lives next door. On September 5, 2011 the agent and F.P. waited 3 hours at the home, for the tenant to arrive; he was to be there at 10:30 a.m. When the tenant did not come to retrieve his belongings a note was left on the door, directing the tenant next door, so the agent could give him his clothes. The tenant did not come to the agent's door. The agent said she was present with F.P. when the tenant's clothes and items were packed. She said

there were 5 or 6 shopping bags of items and that the items did not align with those claimed as missing by the tenant. The tenant's property was stored until October 2013 at which point they were disposed.

The agent said that the tenant is taking advantage of F.P.; that the agent was living thirty feet from the home and that the tenant could have approached her. The agent said that the tenant has not provided any receipts or photographs in support of the claim he has made for personal property.

The agent testified that on August 18, 2011 the tenant continued to have access to the common areas of the house, that those locks have never been changed.

The tenant said that on August 18, 2011 a note had been left on the door of the house, not on September 25, 2011. The tenant confirmed that he had been to the agent's door on August 18, 2011, and that no one answered. The tenant confirmed that he did not return to the agent's unit after August 18, 2011. The tenant said he did not know who the agent was.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the claim for loss of personal property, I find that the tenant has failed, on the balance of probabilities, to show that he made any reasonable effort to retrieve the items from the landlord. I found the tenant's testimony somewhat inconsistent; initially he did not mention a note had been left on the door asking he approach the agent next door, and it was not until after the landlord referenced the note that the tenant acknowledged a note had been left for him. The tenant then said the note was left on the door on August 18; an omission I find would have been critical to the events that the tenant said occurred on that date.

A second attempt to retrieve his personal property following September 25, 2011 would have demonstrated some sort of concerted effort on the tenant's part to mitigate the claim he has made. The tenant did not have his witness present at the hearing and did not have the witness provide any written statement in relation to what he is alleged to have seen occur on September 25, 2011. Therefore, I find that the tenant has failed to prove, on the balance of probabilities, that he made effort to retrieve his personal property and that portion of the application is dismissed.

The Act provides a number of avenues that allow a landlord to end a month-to-month tenancy, such as cause, unpaid rent or landlord's use of the property. A landlord may not deny a tenant access to a rental unit by locking the tenant's door; access to a unit is bound by section 29 of the Act. In order to take possession of a rental unit the landlord must obtain and serve an Order of possession and then may only take possession once a Writ of Possession has been obtained via the British Columbia Supreme Court.

There was no dispute that the landlord denied the tenant access to his room, by placing a lock on the door on August 15, 2011; the tenant was denied access for a period of hours. Again, on August 18, 2011 the tenant was locked out and I find that the tenancy came to an end shortly thereafter, when the tenant failed to enforce the Order of possession that was issued on September 1, 2011.

Section 44(f) of the Act provides an arbitrator with the authority to establish the date upon which a tenancy has ended. Therefore, I find that this tenancy ended effective September 2, 2011. Even though the tenant was issued an Order of possession on the previous day; there was no evidence before me that the tenant took any steps to fully enforce that Order. A copy of the Order was served to the landlord via registered mail accepted on September 23, 2011, but enforcement was not pursued. I have rejected the tenant's submission that he had 10 years to enforce that Order; the tenant has confirmed that the unit he rented does not even exist any longer. If the tenant had wanted possession it would have been reasonable for him to take steps to enforce the Order in a timely manner and to seek compensation for his loss by requesting rent abatement for the cost of enforcement.

However, as the landlord prohibited the tenant from entering the rental unit without an Order of possession for the landlord, I find that the landlord breached the Act. I have then considered the tenant's claim for damages as a result of the landlord's illegal eviction.

In relation to wrongful eviction, Residential Tenancy Branch policy suggests that the purpose of damages is to put the person who suffered the loss in the same position as if the tenancy had been carried out. Policy also suggests that if a tenant is deprived of the use of the rental unit, through no fault of their own, a tenant may be entitled to damages. Compensation may be in the form of rent abatement or a monetary award. An arbitrator may award damages for out of pocket expenditures and value of general losses. Nominal compensation may be provided when there is no significant loss or a significant loss has not been proven, but they affirm there has been a breach of a legal right.

The day following the tenant's eviction he located new housing. The tenant paid less in August and September 2011, (\$500.00 vs. \$800.00) than he would have paid in the room had had been renting. As the tenant had not paid rent in August, until he located new accommodation elsewhere, I find that no direct financial loss occurred. The tenant did not have to pay any additional rent and did not pay rent for a room he could not use. The landlord had breached the Act, but there was no financial loss to the tenant in relation to rent paid.

The tenant described the stress caused when he was denied access to his room and while he said he was outside in the pouring rain, he was able to locate new accommodation the next day. It is reasonable to accept that the tenant did find the eviction upsetting and stressful. Therefore, as the tenant was denied access to his room I find that he is entitled to nominal compensation in the sum of \$85.00 in recognition the 1 night he was without shelter. The balance of the claim for wrongful eviction damages is dismissed.

I have applied the same reasoning to the claim for emergency housing. The tenant had not paid rent in August 2011; therefore, the sum he paid for rental of a room elsewhere did not place him in a less financially favourable condition; in fact, he paid less than he

would have had to pay for the rental unit. Therefore, in the absence of evidence that the housing the tenant found resulted in a financial loss to the tenant, I find that the claim for emergency housing is dismissed.

In relation to the claim for loss of quiet enjoyment, policy suggests that a claim of this nature relates to events that occur during a tenancy, such as frequent or on-going interference such as entering the premises without permission. Frequent and ongoing interference by the landlord, or, if a landlord stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include entering the rental premises frequently without notice or permission; noise, intimidation or restricting services. Temporary discomfort does not entitle a tenant to compensation.

The tenant has claimed damages for the eviction he has described, and I find that the claim for loss of quiet enjoyment essentially duplicates that claim. The events that form the basis of the tenant's claim relate to the eviction and an issue 3 days earlier. The events that occurred on August 15, 2011 were a one-time disturbance that was short in duration. Therefore, I find that the claim for loss of quiet enjoyment is not supported and is dismissed.

Aggravated damages may be awarded to compensate for intangible loss such as physical inconvenience, pain, suffering, loss of amenities and mental distress. This type of damages is measured by the wronged person's suffering and must be caused by deliberate or negligent acts or omission of the landlord. The damage must also be significant in depth, duration and result in a significant influence on the tenant's life.

The tenant said it took him months to recover from the illegal eviction, which had a serious impact on his life. From the evidence before me it is clear that within twenty-four hours the tenant had located new accommodation. There was no evidence that the tenant was denied the right to continue with any employment or that he was incapable of carrying on with his day-to-day activities. There is no doubt that the landlord committed a serious breach of the legislation, however, that breach does not confer an automatic right to damages. From the evidence before me the tenant was upset over the landlord's actions, but there was an absence of any evidence that the eviction caused long-term, significant impacts. Therefore, I find that the claim for aggravated damages is dismissed.

Therefore, the tenant is entitled to the following compensation:

	Claimed	Accepted
Loss of personal property	\$941.00	0
Wrongful eviction	500.00	85.00
Loss of quiet enjoyment	500.00	0
Emergency shelter	510.00	0
Aggravated damages	500.00	0
TOTAL	\$2,951.00	\$85.00

Based on these determinations I grant the tenant a monetary Order in the sum of \$85.00. In the event that the landlord does not comply with this Order, it may be served

on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant is entitled to compensation for damages in the sum of \$85.00; the balance of the claim is dismissed.

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: December 09, 2013

Residential Tenancy Branch

