



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, CNL, OLC, RPP, MNDC, FF
For the landlord: MNSD, MNR, MND, MNDC, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause and 2 Month Notice to End Tenancy for Landlord's Use of the Property, for an order requiring the landlord to comply with the Act, an order requiring the landlord to return the tenant's personal possessions, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit, and alleged unpaid rent, and for recovery of the filing fee.

This hearing began on March 6, 2014, before another Arbitrator, with the tenant and the landlord and his spouse in attendance. It is understood that the original hearing dealt with evidence issues only, and that there was no hearing on the merits of the respective applications.

At the reconvened hearing, the tenant attended the telephone conference call hearing; the landlord did not attend.

The tenant submitted documentary evidence evidence that she served the landlord with her Application for Dispute Resolution and Notice of Hearing by registered mail on December 21, 2013. The evidence was a receipt showing the tracking number of the rental unit and her testimony.

Based upon the submissions of the tenant, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and notice of this reconvened hearing from the Residential Tenancy Branch ("RTB") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I note that the landlord submitted a large amount of late documentary evidence prior to this hearing, and that the landlord did not attempt to call into the hearing during the hearing time.

In the absence of the landlord to present his claim, pursuant to section 10.1 of the Dispute Resolution Rules of Procedure (Rules), I dismiss the landlord's application, without leave to reapply.

Preliminary matter #2-The tenant submitted that the tenancy was over and that she wanted to proceed only on the matters pertaining to a return of her personal property and for monetary compensation. I therefore have excluded her request for an order cancelling Notices or for an order requiring the landlord to comply with the Act.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to return her personal property and for monetary compensation?

Background and Evidence

The tenant's evidence was that this tenancy began on August 1, 2013, monthly rent was \$925, and that she paid a security deposit of \$462.50 at the beginning of the tenancy.

The tenant's monetary claim is \$5000 as follows:

Registered mail costs	\$24.25
Filing fee	\$50
Rent	\$600
Security deposit, new rental unit	\$300
Value of couch set, toddler bed	\$450
Value of all other personal property	\$1400
Moving costs	\$200
Room and board, Dec. 15-Jan. 30	\$300
Claim for damages	\$1675.75

In support of her application, the tenant submitted although the November rent was paid, she was away from the rental unit for three weeks that month, and unable to

contact the landlord; however, according to the tenant, her mother was in regular contact with the landlord on her behalf, and that her mother and the landlord agreed that rent for December would be sorted out when she returned. The tenant submitted that the landlord was kept up-to-date with the tenant's whereabouts through regular contact with her mother.

The tenant submitted that when she returned to the rental unit on December 14, 2013, the landlord and another person were inside the rental unit packing her personal property. According to the tenant, she was not allowed access to the rental unit and that the landlord removed her belongings to a storage unit, denying her access to her personal property unless she paid a large sum for rent and storage costs.

The tenant submitted that the landlord never served her with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") regarding rent for December.

The tenant submitted that she is entitled to costs incurred in replacing basic necessities the landlord took, such as a bed for her toddler, another bed for her, clothing, towels, linens, pots and pans, and cooking supplies.

The tenant submitted that the landlord was instructed at the first hearing on her application, with another Arbitrator, the landlord was instructed that he should keep the tenant's personal property in storage and not to dispose of any items.

As to her claim for rent for another rental unit, the security deposit for the other rental unit, and for room and board, the tenant submitted she is entitled to her request as she suddenly and without notice lost her home and all her possessions due to the landlord's illegal actions.

As to her claim for damages, the tenant submitted that she was under stress the entire tenancy as there were no locking mechanisms on the windows, the landlord would make sudden appearances at the rental unit, and that the landlord would begin coming by 6 or so days prior to the first day of the month, attempting to collect rent before it was due.

The tenant submitted that the landlord became angry when she would not pay rent early, and that many times, she noticed that he was parked outside the residential property, in a stalking fashion.

The tenant also claimed she was entitled to monetary compensation due to the illegal eviction.

The tenant's relevant documentary evidence included a receipt for the toddler bed, a receipt for rent and security deposit for her next rental unit, a written submission, a written statement from her mother, and email communication from the landlord.

The tenant additionally submitted that she was not able to obtain much of her evidence as the landlord had her personal property in storage.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As to the landlord denying the tenant's access to the rental unit, a tenancy remains in effect until such time it ends under section 44 of the Act. In order for the landlord to have ended the tenancy for unpaid rent, the landlord would have had to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here, and allow the tenant the opportunity to pay the outstanding rent five days after receiving such a Notice.

If the tenant then fails to pay the rent or vacate, the landlord may apply to the Residential Tenancy Branch for an order of possession for the rental unit, which is enforceable in the Supreme Court of British Columbia.

In this case, the undisputed evidence shows that the landlord illegally ended the tenancy by preventing the tenant from having any further access to the rental unit on December 14, 2013 and that he did not properly end the tenancy by serving a 10 Day Notice.

The undisputed evidence also shows that the landlord is holding the tenant's possessions as ransom for payment. I find the landlord's actions not only violated the requirements of the Act but are egregious.

I therefore order the landlord to return the tenant's personal property to the tenant at the date and time specified by the tenant but no later than May 5, 2014, and at no cost to the tenant. The landlord must take all necessary steps to have the tenant's possessions made available to the tenants prior to the date and time the possessions are to be retrieved by the tenant. This includes, but is not limited to, ensuring the tenant is provided with a means to gain access to the storage unit or rental unit (i.e., keys or access codes) if necessary.

In addition to losses the tenant may have already suffered, the landlord is hereby informed that the landlord's failure to return the tenant's property as ordered or if the landlord has disposed of any personal property may entitle the tenant to additional compensation. The Act provides for monetary compensation up to \$25,000.00 for pecuniary losses (e.g.: loss of property, etc.) and non-pecuniary damages (e.g.: suffering, grief, mental distress, etc.) and aggravated damages, as explained in Residential Tenancy Policy Guideline 16: *Claims in Damages*.

As to the tenant's request for monetary compensation for damages in suddenly being without a home, as I have found that the landlord's actions in illegally ending the tenancy are egregious, I considered the Residential Tenancy Branch Policy Guideline #16, which states that an award for damages may be awarded for the value of a general loss where it is not possible to place an actual value on the loss or injury.

I find that to be the case here. The tenant did not supply proof of a quantifiable loss for personal property, but I find it reasonable that she is entitled to be reimbursed for the value of replacing basic items on such short notice, such as a bed for her toddler, kitchen items, and clothing.

I find a reasonable amount for such loss to be \$1200.

As to the landlord's actions in illegally ending the tenancy, I find the tenant is entitled to be compensated for short term stress and anxiety in having to suddenly acquire new living accommodations and that a reasonable amount is \$500 for her claim for damages.

As to the tenant's claim for rent and a security deposit for another rental unit, I find this and the tenant's claim for room and board is a cost the tenant would bear no matter had she stayed in the rental unit or moved into another rental unit, as is the case here. I therefore decline to award her costs for monthly rent, a security deposit for another rental unit, and room and board.

I also find that the tenant's request for moving costs to be non quantifiable, and I therefore decline to award her any costs for moving, especially in light of the fact the landlord holds the tenant's personal property.

As to the tenant's claim for registered mail expenses, for the provision of notice of this hearing to the landlord, the *Act* does not provide for the reimbursement of expenses

related to disputes arising from tenancies other than the filing fee and I therefore decline to award her recovery of registered mail expenses.

As to the tenant's security deposit, as the tenancy is over, the landlord's application claiming against the tenant's security deposit has been dismissed, and the landlord has been provided the tenant's forwarding address, as indicated by his filing an application for dispute resolution against the tenant, I order the landlord to return the tenant's security deposit immediately. I grant the tenant a monetary award in the amount of \$462.50, the amount of her security deposit.

I allow the tenant recovery of her filing fee of \$50.

Due to the above, I find the tenant is entitled to a total monetary award of \$2212.50, comprised of \$1200 for the replacement of personal property and items, \$500 for short term stress and anxiety for the landlord's illegal ending of the tenancy and having to secure alternate accommodations, the tenant's security deposit of \$462.50, and the filing fee of \$50.

Conclusion

The tenant's application for monetary compensation is partially granted.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2212.50, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: April 28, 2014

Residential Tenancy Branch

