



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: RPP, MNDC
For the landlord: OPC, MNR, MNDC, FF

Introduction and Preliminary Matters

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 requiring the landlord to return the tenant's personal possessions and a monetary order for money owed or compensation for damage or loss.

The landlord applied for an order of possession for the rental unit due to alleged cause, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

This hearing began on June 3, 2014, with both parties presenting their application, and an Interim Decision was made on June 4, 2014, which should be read in conjunction with this Decision and is incorporated herein by reference.

At the original hearing, neither party raised any issue regarding the other's application.

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

The landlord was directed to send is documentary evidence which was referred to in the original hearing as the evidence was not before me at the original hearing. The Interim Decision states that an adjourned hearing would need to be conducted as the photographic evidence was too dark to be discernible. Additionally the landlord would be required to provide evidence that he was in fact the landlord or a landlord's agent in order to go forward with his application.

Although the landlord failed to appear at the reconvened hearing, the evidence he submitted after the hearing shows that he was acting as a landlord's agent, as shown by a statement from the owner of the residential property. I therefore made the decision to proceed on the landlord's application. As the landlord failed to attend the reconvened hearing, as notified by a Notice of Hearing sent by the Residential Tenancy Branch

("RTB"), I considered the evidence from the landlord received at the original hearing and the additional documentary evidence.

It must also be noted that the landlord and owner of the residential property supplied additional documentary evidence, which was not requested and had not been submitted prior to the original hearing. This additional evidence was not considered as the hearing was adjourned only to receive the landlord's original evidence.

At the original hearing, both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, 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 #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 the landlord's request for an order of possession for the rental unit.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

At the original hearing, the tenant submitted that the tenancy began on July 3, 2013, ended on March 1, 2014, and monthly rent was \$265.

The landlord submitted that the tenant vacated on March 24, 2014 and that monthly rent was \$320 as hydro was included with the rent.

Tenant's application-

The tenant's monetary claim is \$5000 for the value of her personal property.

In support of her application, the tenant submitted that she contacted the landlord and they had agreed to meet at her place of employment at the end of January 2014 in order to pay her monthly rent for February and to give her notice that she was vacating the rental unit by March 1, 2014. The tenant submitted further that the landlord failed to appear and that she was unable to contact him for several weeks. The tenant

submitted further that up to the time she left, the landlord failed to mention her 30 days' notice.

The tenant submitted that when she made contact with the landlord near the end of March, the landlord issued a vulgarity and would not speak with her.

The tenant submitted that she removed her personal property as best as she could and taking as much in each load as possible; however, the tenant was unable move all her personal property at once due to the rental unit being on an island and that after a period of time, the landlord prevented access to the rental unit.

The tenant submitted that she assessed the value of her personal property originally at \$5000, but that now the value is \$797, to reflect used prices. The items the landlord has wrongfully detained, according to the tenant, are a dishwasher, a lounge chair, 2 garden tables, another chair, a television stand, a vacuum, and a frame.

The tenant submitted that in addition to the personal property unlawfully detained in the rental unit, the landlord has disabled her recreational vehicle and she is unable to drive the vehicle containing other property from the residential property.

Landlord's response-

The landlord submitted that the personal property claimed by the tenant was junk. The landlord submitted further that the tenant only informed him 3 days before rent was due in February and that he did not know the tenant was vacating the rental unit until another tenant in the residential property informed him that the tenant was leaving. The landlord denied receiving notice from the tenant.

The landlord submitted further that the tenant did not return the keys to the rental unit and had full access to the rental unit to retrieve her belongings. The landlord submitted further that the parties made an appointment to view the rental unit, but that the tenant failed to show.

The landlord confirmed that he did disable the recreational vehicle until the tenant paid rent.

Landlord's application-

The landlord's monetary claim listed on his application was \$620; through his evidence the landlord attempted to claim an additional \$15 for keys. The claim included \$320 for rent for March 2014, and garbage clean-up for \$300.

In support of his application, the landlord submitted that the tenant gradually moved out of the rental unit through March, that he did not receive a proper 30 day notice that the tenant was vacating, and that he suffered a loss of rent revenue for that month.

The landlord submitted further that the tenant left junk, including a refrigerator he had to haul away, at the expense of \$300, as shown by his receipt.

The landlord confirmed that there was not a move-in or move-out condition inspection report, as it “would be rather impossible with 2 other tenants” living at the residential property.

The landlord’s relevant documentary evidence included photographs of the rental unit, a receipt for garbage hauling and 2 pages of statements.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Tenant’s application-

I find the evidence supports that the landlord has wrongfully denied the tenant access to her personal property, that being the recreational vehicle and its contents located on the residential property, when he disabled the vehicle, as a form of ransom for monthly rent. Therefore I find the landlord has retained the tenant’s personal property after this tenancy has ended, in violation of the Act and Residential Tenancy Regulation #7.

Pursuant to section 65 of the Act, I therefore order the landlord to make the tenant’s personal property, including the recreational vehicle in its entirety, available for the tenant to retrieve by August 23, 2014. The landlord said that he could easily enable the vehicle as he easily as he disabled the vehicle, and he is therefore so ordered. The landlord is further directed to not remove any of the contents of the recreational vehicle.

The landlord is hereby informed that the landlord’s failure to return by way of enabling the recreational vehicle the tenant’s property as ordered or if the landlord has disposed of any personal property may entitle the tenant to 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 remainder of the personal property left in the rental unit, I find the tenant had full opportunity to remove this personal property and I am not convinced that she failed to remove all belongings that she had intended. Additionally, I find the tenant submitted insufficient evidence of the value or of the items left in the rental unit, and as a result, I find the tenant has not supported her monetary claim, which was reduced to \$797. It is therefore dismissed.

Landlord's application-

In the absence of a written tenancy agreement, I find that this tenancy was on a month-to-month basis.

Section 45 (1) of the Act requires a tenant to give written notice to end the tenancy one clear calendar month before the next rent payment is due is required in giving written notice to end the tenancy.

In the case before me, I find the landlord submitted sufficient evidence that the tenant failed to give a written notice that she was vacating, and that the said insufficient notice caused the landlord to suffer a loss of rent revenue for the month of March 2014. As to the amount, the parties provided differing versions of rent to be paid, with the tenant stating that monthly rent was \$265 and the landlord stating that monthly rent was \$320. In the absence of a written tenancy agreement establishing monthly rent and in light of the disputed testimony, I find the landlord submitted insufficient evidence to support his claim that monthly rent was \$320; however, I grant him a monetary award for \$265.

As to the landlord's claim for garbage removal, I find the landlord submitted insufficient evidence to prove that the garbage he removed belonged to the tenant. In reviewing the landlord's photographs, there many items of property on and about the residential property, some belonging to the other tenants, according to the landlord. I also relied on the absence of a move-in or move-out condition inspection report, as is required of a landlord under sections 23 and 35 of the Act, which would support a landlord's claim for damages or cleaning.

I additionally relied upon the receipt of the landlord, which shows that garbage removal was in May, and the tenancy ended in February or March.

I therefore dismiss the landlord's claim for \$300.

As the landlord failed to claim for \$15 in his application or provide a receipt in that amount for keys, I decline to award him such amount.

As the landlord has had at least partial success with his application, I award him recovery of the filing fee paid for this application, in the amount of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$315, comprised of \$265 for unpaid rent or loss of rent revenue and the filing fee of \$50.

Conclusion

The tenant's application for an order requiring the landlord to return the tenant's personal possessions has been partially granted as he has been ordered to enable the tenant's recreational vehicle and to not remove any contents.

The tenant's monetary claim is dismissed.

The landlord's application has been partially granted as I have granted him a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$315, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord 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 tenant is advised that costs of such enforcement are recoverable from the tenant.

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 13, 2014

Residential Tenancy Branch

