



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RPP, AAT, RR, FF, SS, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to serve documents or evidence in a different way than required by the *Act* pursuant to section 71;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's representative at this hearing (the landlord) confirmed that the tenant handed a representative of the landlord a copy of his dispute resolution hearing package on or about June 19, 2014. The tenant confirmed that he had received copies of the landlord's written evidence, the only evidence submitted by either party for this hearing. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the commencement of the hearing, the tenant confirmed that he had served the landlord with his hearing package in the usual way as required by the *Act*. As there was no need to issue a substituted service order, the tenant withdrew his application to serve documents or evidence in a different way than required by the *Act*. This portion of the tenant's application is withdrawn.

As the tenant applied for and received a fee waiver and paid no filing fee for his application, there was no need to consider the tenant's application for the recovery of his filing fee.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for damages or losses arising out of this tenancy? Should any other orders be issued with respect to this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Although the parties agreed that this tenancy for a room in a supported housing residence began in August 2013, the parties disagreed as to when the tenant moved into this rental property. The landlord claimed this happened on August 1, 2013, while the tenant maintained that this occurred on August 12, 2013.

The landlord testified that the landlord provides a range of supported housing services and programming to residents in this facility for the tenants, who have a range of challenges. He said that the programming is tailored to each tenant's needs and can include such services as the administration of finances, administration of medications, a community kitchen, homemaker services, bedbug services, and a range of other programs. He said that the Residential Tenancy Agreement (the Agreement) signed by the parties included a provision that clients/tenants are expected to participate in programs. Although the landlord testified that the monthly economic rent for the entire package of services paid for each tenant in this subsidized facility is \$2,941.80, the tenant's portion of this monthly rent is currently set at \$375.00, payable in advance on the first of each month. The landlord testified that the tenant paid a \$250.00 security deposit on or about August 1, 2013, an amount still retained by the landlord.

In the tenant's application for dispute resolution and his sworn oral testimony, the tenant maintained that the landlord forced him to leave his rental unit on or about May 29, 2014 until mid-June 2014. During this period, the landlord relocated him to the landlord's temporary shelter accommodations while the landlord's staff removed items from his room. The tenant maintained that the landlord locked him out of his room, by deactivating his key cards, his key fob to access the rental property and turning off the power in the rental unit, with the exception of the power to the fridge. He testified that he was told by one of the landlord's representatives that the only power that would be

disconnected in his room would be the power to his stove because the landlord had concerns about fire safety due to the condition of the rental unit.

The tenant applied for a monetary award of \$2,500.00 to compensate him for a range of items that he maintained were either broken or removed from his rental unit during the landlord's cleaning of the rental unit when the tenant was prevented from accessing his room. He alleged that a Rolex watch and many other items of value were taken during this period and not returned to him, including missing clothing, a telephone, electronics and headphones. He also claimed that his LCD TV, DVD player and speakers were broken while in the care of the landlord. He explained that he could not supply receipts to confirm the value of these items as these receipts were in an envelope in the rental unit, which has also gone missing while in the landlord's care. The tenant's application also included a request for the return of his payment of over two week's rent while he was unable to access his rental unit. The tenant said that the landlord's actions in removing him from his room and damaging or discarding his belongings has caused a great amount of stress in his life and has set him back in his efforts to recover from addiction problems.

The landlord confirmed that the tenant was asked to leave his room on or about May 29, 2014. The landlord entered sworn oral testimony and written evidence regarding the attempts the landlord had undertaken to obtain the tenant's co-operation in removing the clutter from the tenant's room. The landlord maintained that the tenant did not honour his commitments to clean his room in a timely or effective fashion. The landlord entered written evidence that the tenant refused to allow the landlord's representatives to enter his room when requested and threatened to attack anyone who did enter his room with a knife. He alleged that the decision to remove the tenant from the rental unit, preventing him from accessing his room, was made for health and safety reasons. The landlord confirmed that the landlord did not issue any notice to end this tenancy nor did the landlord apply for an early end to this tenancy in accordance with the *Act*. The landlord also confirmed that the landlord continues to hold 12 bags of the tenant's belongings in a storage area of the rental property. The landlord had wanted the tenant to sort through these belongings to determine what was of value and what could be discarded. The landlord did not want the tenant returning the clutter carefully removed by the landlord's staff over a two-week period. However, the landlord also said that the tenant had failed to pick up the 12 bags as requested by the landlord.

Preliminary Issue – Jurisdiction to Hear this Application

Neither party entered into written evidence a copy of the signed Agreement, a document that would have assisted me in determining whether I had jurisdiction to hear the tenant's application. Given the nature of the services described by the landlord, I asked

the parties to clarify whether they understood that this tenancy was covered under the *Act*. In this regard, the tenant maintained that the Agreement clearly stated that this tenancy was established pursuant to the *Act*. He read a portion of the Agreement, which confirmed his claim that both parties committed to follow the requirements of the *Act* during the course of this tenancy. The landlord did not dispute the wording of the Agreement entered into sworn testimony by the tenant. The landlord testified that the landlord has received conflicting determinations regarding the jurisdiction of rental units in this property. He said that some Arbitrators have declined jurisdiction while others have determined that the landlord's tenancies do fall within the *Act*. The landlord confirmed that the landlord routinely issues notices to end tenancy under the *Act* for rooms similarly situated to that of the tenant in this application. He also confirmed that there is a signed Agreement calling for the payment of monthly rent, the payment of a security deposit, and a clause establishing that the parties will follow the provisions of the *Act*. Although the landlord also operates a temporary shelter facility in another portion of this property (or a nearby one), the landlord confirmed that the tenancy in question is not for the landlord's temporary shelter. The landlord stated that he had no objection to the tenant's claim that I had jurisdiction to hear the tenant's application.

Based on the limited evidence before me and the sworn testimony of the parties, I find that I have jurisdiction to hear the tenant's application. In coming to this determination, I rely heavily on the undisputed portion of the Agreement read into oral testimony by the tenant, the landlord's confirmation that the landlord submits applications for dispute resolution for similarly situated rooms in this property and the landlord's lack of objection to proceeding with this hearing. In this regard, I can only consider the evidence submitted to me by the parties and on the basis of the evidence conclude that this tenancy falls within the jurisdiction of the *Act*.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. As the claimant, the tenant bears the responsibility of demonstrating his claim.

At the hearing, the landlord asserted that it was the tenant's responsibility to obtain his 12 bags of personal possessions from the landlord's storage area. These bags were

removed from the rental unit by the landlord's representatives during the period when the tenant had no access to the rental unit. The tenant objected to this process, noting that he has physical problems that make it difficult for him to carry items and return them to his rental unit. Rather than the process originally identified by the landlord to allow the tenant access to his belongings on a gradual basis, I ordered the landlord at the hearing to return all of the tenant's 12 bags of personal possessions and any additional possessions of value remaining in the landlord's safekeeping to the tenant's room as soon as possible and within 24 hours of the hearing. The landlord agreed to return the tenant's possessions as ordered. The tenant can decide which of these items he wishes to keep, knowing that the landlord can seek an end to this tenancy in accordance with the *Act* if the tenant's housekeeping presents a health or safety risk.

Section 28 of the *Act* outlines a tenant's right to quiet enjoyment of the rental premises, which include but are not limited to the following rights

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference...

In this case, the landlord admitted at the hearing that this situation was not handled as professionally as it could have been by the landlord's staff. I find this statement accurately described the way that the tenant's legal rights established under the *Act* have been handled by the landlord's representatives. As I noted at the hearing, the landlord may very well have had sufficient grounds to issue notices to end this tenancy on a number of grounds. However, that did not occur, and the landlord's representatives appear to have disregarded the commitment made in the Agreement to follow the requirements of the *Act*. The emails entered into written evidence by the landlord confirmed by the landlord's sworn oral testimony reveal a pattern of inattention to or lack of understanding of the duties and responsibilities of a landlord.

The landlord has made no argument that the *Act* does not apply to this tenancy and did not produce anything that would demonstrate that to be so. If the *Act* does apply to this tenancy, then the full rights and responsibilities of tenants and landlords established under the *Act* apply to both parties. There is no provision in the *Act* for a landlord to threaten a tenant with movement to one of the landlord's temporary shelter

accommodations or to subsequently take action to ensure that a tenant has no option but to accept the landlord's offer of relocation to a temporary shelter. Similarly, there is no provision in the *Act* to take unauthorized action to deactivate the tenant's keys and key fob such that he was locked out of his room and his facility. The landlord was also without legal authority to turn off most of the hydro in the tenant's room to prevent him from accessing the room the landlord had committed to rent to the tenant by way of a signed Agreement. I also find that the process outlined in the landlord's emails whereby the landlord would only return the tenant's belongings on a piecemeal basis and on certain conditions not only contravenes the *Act*, but it reveals a surprising lack of understanding of what a landlord is legally authorized to do. The landlord's claim that the landlord was in some way justified in taking such actions because the tenant presented a serious health and safety risk is a further reflection of a fundamental lack of understanding of the legal process involved in enforcing the rights of a landlord.

As I noted at the hearing, there is a detailed process to be followed when a landlord wishes to end a tenancy for cause or needs to end a tenancy early. When there are serious health and safety concerns, an early end to tenancy can be obtained on relatively short notice. However, to end any tenancy or remove a tenant from his rented room against his wishes, a landlord must first seek and obtain an order from an Arbitrator appointed under the *Act*. In this case, I find that the landlord totally ignored any and all of the requirements of the *Act* in ensuring that the tenant was temporarily removed from his rental unit. While the landlord may have had good intentions to assist the tenant in clearing the tenant's living space of clutter such that his tenancy could continue, the landlord cannot arbitrarily take such action without following the correct legal process set out in the *Act*, which requires an order from an Arbitrator.

For the reasons outlined above, I find that the landlord's actions in removing the tenant from his rental unit and relocating him for over two weeks to one of the landlord's temporary shelter residences contravened the *Act*.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." While I find that there has been a reduction in the value of the tenancy agreement for a period of time, I also must take into account the responsibility placed on the tenant to demonstrate any losses he may have incurred.

Although the tenant maintained that many of his items remain missing after he returned to his rental unit in mid-June 2014, at least some of these items may be in the 12 bags that remain in storage in the landlord's safekeeping. In the absence of anything but the tenant's sworn testimony, I find that the tenant has failed to produce sufficient evidence

to demonstrate that he had belongings of value that were either lost, stolen or damaged while in the landlord's safekeeping. He produced no written or photographic evidence to support his claim in this regard. However, I also recognize that the landlord did not submit sufficient records regarding the items that came under the landlord's control during the two-week period when the tenant had no access to his belongings.

While the tenant did not incur any additional accommodation expenses during the period of his stay in the landlord's temporary shelter, I accept the tenant's testimony that his move to a temporary shelter from his own rental room was stressful for him. The Agreement signed between the tenant and the landlord was for private and secure rental accommodation. Although the landlord could obtain an end to this tenancy, the landlord could only do so after exercising the legal rights established under the *Act*. I find that the tenant did not move of his own accord from his rental unit and was coerced into moving by the landlord, a fact reinforced by the steps taken by the landlord to ensure that the tenant could not access his rental unit or building. Since I find that there is a significant difference between living in a temporary shelter and the accommodations rented to the tenant, I allow the tenant a monetary award of \$375.00, the equivalent to his portion of one full month's rent. I arrive at this figure because the tenant was under the threat of removal from the rental unit by unauthorized means for a period of time before the landlord took action on or about May 29, 2014. Given that all of the tenant's possessions of value were not returned to him when he returned to his rental unit by mid-June 2014, I find that the award of a full month's rent is warranted.

Separate from the tenant's physical removal from the rental unit for a period of over two weeks, I find that the landlord's actions have diminished his quiet enjoyment of the premises and have decreased the value of his tenancy. I accept the tenant's sworn testimony that he has found the landlord's actions very stressful. Under these circumstances and given my finding that the landlord has contravened the *Act* in many different ways in its interaction with this tenant, I find that the tenant is entitled to a further monetary award of \$250.00 for his loss of quiet enjoyment and the loss in value of his tenancy.

In the event that the landlord has failed to return the tenant's 12 bags of possessions by the time the parties receive this decision, I authorize the tenant to reduce his monthly rent to \$275.00 until such time as all 12 bags have been returned to him. In that event, the tenant's portion of his monthly rent would revert to \$375.00 on the first of the month following their return to him.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$625.00, which enables the tenant to recover rent paid to the landlord and for his loss of quiet enjoyment and the loss in value of his tenancy. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I order the landlord to return all of the tenant's 12 bags of personal possessions and any additional possessions of value in the landlord's safekeeping to the tenant's room as soon as possible and by 5:00 pm on August 15, 2014.

In the event that the landlord has failed to return the tenant's 12 bags of possessions by the time the parties receive this decision, I authorize the tenant to reduce his next scheduled monthly rent to \$275.00 until such time as all 12 bags have been returned to him. In that event, the tenant's portion of his monthly rent would revert to \$375.00 on the first of the month following their return to him.

The tenant's application for a substituted service order is withdrawn. As the tenant did not pay a filing fee for his application, I have not considered his application to recover his filing fee.

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 19, 2014

Residential Tenancy Branch

