



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: , MNDC, LRE , RPP, AAT, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for the return of the security deposit, a rent abatement for part of August 2014, return of the tenant's property, and order to suspend or restrict the landlord's access and a monetary claim for loss and damage of the tenant's possessions removed by the landlord.

The landlord and a representative of the tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Jurisdiction

At the outset of the hearing the issue of jurisdiction arose. The landlord testified that they are the owner of the property and the tenant merely rents a cottage that was built to house farm workers. The landlord testified that the tenant shares laundry, hot tub, kitchen and bathroom facilities with the landlord and pointed out that this is reflected in the written tenancy agreement. The landlord's position is that the tenancy is not governed by the Residential Tenancy Act.

A copy of the tenancy agreement is in evidence. Although the agreement states that the tenant has the option of "*eating from the farm gardens...provided they are contributing a minimum of 1.5 hrs total per month in maintaining garden beds...*" I find no terms in the agreement that address sharing the kitchen or bathroom with the owner living in the main house.

However, the landlord explained that cabin occupants routinely come to the owner/landlord's house to dine with the landlord and also freely use the landlord's

bathroom facilities. The landlord pointed out that, in addition, they provide laundry facilities. A term in the contract confirms this, as excerpted below :

“Landlord is providing laundry facility for use of tenant and tenant has been made aware that use of electric dryer shall be limited to only on rainy days and winter when it is not possible to use solar dryer affixed to cabin”

The tenant’s agent did not agree that the tenancy included using the kitchen and bathroom of the landlord’s residence. The agent pointed out that the unit was advertised as self contained and included a composting toilet, a seasonal shower and basic cooking facilities.

I find that the tenancy agreement does not have a term stating that either the kitchen or the bathroom are to be shared with the owner. I also find the fact that laundry or other amenities are available to the tenant for their use, under the tenancy agreement, does not constitute proof that there is a shared kitchen and bathroom with the property owner as part of this tenancy.

Given the evidence before me, I find that this tenancy relationship is governed by the Residential Tenancy Act.

Issues to be Decided for

Is the tenant entitled to a refund of rent and the return of the tenant’s security deposit?

Is the tenant entitled to monetary compensation for loss of possessions?

Should the landlord be ordered to return the tenant's property?

Background and Evidence

The tenancy began May 1, 2014 with rent of \$550.00 and a \$275.00 security deposit. \$275.00.

The landlord testified that the tenant was told to move out and agreed but did not comply. The landlord stated that after the tenant was told to leave, they were aware the tenant’s possessions were partially packed by his mother August 17, 2014. However, when the tenant had not vacated by August 19, 2014 the landlord removed the tenant’s remaining property and placed it outside at the end of the private drive.

The landlord acknowledged that the tenant had paid rent for the month of August, 2014 and acknowledged that they had not issued any Residential Tenancy Branch approved forms terminating the tenancy. The landlord also admitted that they did not apply for dispute resolution to obtain an order of possession nor did they get a writ of possession from the B.C. Supreme Court.

The tenant testified that he was suddenly denied access to his rental unit on August 19, 2014 and was physically manhandled by the landlord when he tried to enter his unit. The tenant testified that he returned with the police and again attempted to enter without success. The tenant stated that assault charges against the landlord are currently being contemplated by police.

The tenant testified that the landlord received full rent for the month of April 2014, but deprived him of the use of his unit and the tenant feels that he is therefore entitled to a partial refund of rent for April in the amount of 230.64. The tenant also stated that his \$275.00 security deposit has not been returned.

The tenant pointed out that the landlord removed all of his remaining possessions and placed them at the end of an unpaved driveway, open to the elements and not secured. The tenant stated that he discovered that some of his property is missing or damaged and provided a list of the missing or damaged items. In addition to the security deposit refund and the rent refund, the tenant is claiming the following:

- \$500.00 reimbursement for damaged mattress,
- \$45.00 for 3 damaged pillows,
- \$134.00 for missing Boss preamp microphone,
- \$25.00 for a missing Guitar Capo,
- \$50.00 for a missing large framed batik, and
- \$50.00 for a missing wicker bookshelf

The landlord disputed the tenant's claims that any of the above property was missing or damaged. The landlord pointed out that they called the tenant immediately to let him know that his possessions were removed and available for pick-up. The landlord also pointed out that the area where the property was placed is monitored by a security camera and is sheltered from the main highway.

The landlord acknowledged that they failed to keep a written inventory of the items removed from the unit, but they believe that the values put forth by the tenant in regard to the allegedly missing or damaged property have been exaggerated by the tenant. However, no evidence respecting alternate estimated values was submitted into evidence by the landlord.

Analysis

In regard to rent abatement claimed by the landlord for the month of August 2014, I find that the tenant paid rent for the entire month but was deprived of the use and enjoyment for a portion of the month from August 19 to August 31, 2014.

Accordingly I find the tenant is entitled to receive 13 days rent abatement for August 2014, totaling \$235.00.

With respect to the tenant's security deposit, I find that the landlord has not obtained an order to retain the deposit, nor any portion thereof and must therefore refund the deposit pursuant to section 38 of the Act. I find that the tenant is entitled to a refund of \$275.00.

With respect to the remainder of the tenant's monetary claim, amounting to \$804.00, I find that It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant, to 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 respondent.

With respect to the manner in which this tenancy was ended, I find that the landlord violated the Act by taking possession of the unit away from the tenant without following section 44 of the Act to end the tenancy in accordance with the legislation

I further find that section 57(2) of the Act prohibits a landlord from taking actual possession of a rental unit that is occupied by an over-holding tenant unless the landlord has a valid writ of possession issued under the Supreme Court Civil Rules. I find that the landlord did not have a valid writ from the Supreme Court. In this regard, I find that the tenancy was terminated by the landlord in violation of the Act.

In any case, I find that the tenant was not over-holding the rental unit at the time the landlord chose to take possession, because the tenant had already paid the rent for August 2014 and had a valid right of possession at that time.

In regard to taking over the tenant's personal possessions, I find that section 24(1) of the Act states that a landlord may only consider that a tenant has abandoned personal property if:

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

Only if the landlord has satisfied all of the criteria under the regulation, then they would be permitted under section 24(3) of the Act to remove the tenant's personal property from the residential property. However, on removal the landlord must deal with it in accordance with the Act and Regulation.

I do not accept that the tenant had ever abandoned the suite or his personal property.

I find that section 26(3) of the Act prohibits a landlord from interfering with the tenant's property. This section of the Act states that, whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not: (a) seize any personal property of the tenant, or (b) prevent or interfere with the tenant's access to the tenant's personal property.

I find that the landlord violated the Act by preventing the tenant from entering his unit and by not allowing him free access to retrieve his property on August 19, 2014.

Even in cases where a tenant *has* abandoned their rental unit, I find that the landlord would still be required to comply with section 25 of the *Residential Tenancy Regulations* which states that the landlord must store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal and keep a written inventory of the property.

Moreover, section 30 of the Regulation states that, while the landlord is storing the tenant's personal property, the landlord owes a duty of care to the tenant when dealing with it and must exercise due diligence and caution in safeguarding the property as required by the nature of the items to ensure that it is not damaged, lost or stolen.

I find that this landlord did not fulfill their obligation under the Act to properly store the tenant's possessions. By depositing the contents from the tenant's home at the end of the driveway of the property, I find the landlord failed in their duty of care obligations specified in the Regulations. I further find that the landlord did not keep a written inventory of any of the items that they chose to remove, as required under the Regulation.

For the reasons above, and in the absence of evidence to the contrary from the landlord, I find it necessary to rely solely on the tenant's evidence relating to the loss of property claim. I find that the tenant included a list of items and their values submitted as part of the tenant's monetary claim in the application.

Therefore, I accept the tenant's claim of \$804.00 and find that the tenant is entitled to be reimbursed this amount by the landlord for the lost or damaged possessions.

I order that, should the landlord succeed in locating any of the missing items and return them to the tenant in an undamaged and complete state, the landlord should be credited by the tenant with the applicable value of that particular item, as a reduction or in lieu of payment of a portion of the monetary award.

Based on the evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation in the amount of \$1,364.00, comprised of \$235.00 rent abatement for part of August, \$275.00 for the return of the tenant's security deposit, \$804.00 for lost or damaged property and the \$50.00 cost of the application.

Accordingly, I hereby grant the tenant a monetary order for the difference in the amount of **\$1,364.00**. This order must be served on the landlord and may be enforced through Small Claims Court.

Conclusion

The tenant is successful in the application and is granted monetary compensation including a refund of the security deposit, a rent abatement and damages.

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: September 26, 2014

Residential Tenancy Branch

