



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RPP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord return the tenant's personal property.

Both parties attended the hearing. Each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The tenant also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for recovery of rent and other damages?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlord should be ordered to return the tenant's personal property?

Background and Evidence

This tenancy began in May, 2014 and ended on August 15, 2014. Rent in the amount of \$500.00 per month was payable on the 1st day of each month and there are no rental arrears. No security deposit or pet damage deposit were collected by the landlord.

The tenant's first witness testified that she is a Mental Health worker and has been working with the tenant since about May, 2014 and has attended the rental unit about 30 times. The rental unit is room in a house with perhaps 7 units that are rented out as individual dwellings. The tenant had a bachelor suite type of unit with no real bedroom and all units shared a bathroom. The witness has never seen another person in the rental unit.

On August 15, 2014 the tenant went for lunch and upon returning found plywood boarding up the door to the rental unit granting the tenant no access. The tenant believed his dog was in there. The tenant called the witness very upset and hysterically emotional from BC Housing advising what happened. The witness assisted by calling an emergency response team who sent another worker. Somehow the rental unit was accessed and the dog was taken to a shelter, and the tenant was taken to a men's shelter. The tenant then had daily appointments with the witness, who also took the tenant to see his dog and got him set up with a psychiatrist and other support. The tenant never accessed his belongings again.

On August 26, 2014 the witness and another support worker drove by the rental property and saw a trailer full of things in the driveway. They picked up the tenant and went back to the rental property and the tenant got emotional stating that the items in the trailer belonged to him. Other residents were there and advised that the items were going to the dump and that the tenant or anyone could take what they wanted. The tenant was too emotional and didn't take anything. The tenant was still staying in a men's shelter at the time. The tenant lost all his property, his rental unit, his dog and all identification which was very hard to come by for someone on disability. The tenant found it very traumatizing.

The tenant testified that the landlord did not live with the tenant in the bachelor suite.

He further testified that he had gone to the soup kitchen to eat and upon returning he looked in the door of the rental unit and saw a stranger in it with some belongings in his hand that belonged to the tenant. The tenant asked where the landlord was and he replied that the landlord was in the back yard. The tenant approached the landlord who said the tenant had to leave, so he did. The tenant went to BC Housing for help because he didn't know where else to go. The tenant went back to the rental unit with a worker from the Community Crisis Response Team and they found the plywood on the door to the rental unit. The tenant and the worker took down the plywood and got the dog out and then left the property.

The tenant further testified that he found the trailer on the property full of his belongings. The landlord kept the tenant's computer desk, blankets, mirrors, odds and ends, and

some belongings are in neighbour's suites. Missing items also include his photo identification, dog kennel, clothing, and furniture. The landlord has now moved into the rental unit but also has a home in another community.

The tenant stayed in a hostel for over a month and the landlord kept his rent.

The tenant's second witness testified that she has known the tenant since May this year. She is a support worker who works for the local health authority, has clients in the rental complex and has been in the tenant's unit a couple times per week. She testified that there was a kitchen inside the unit and a single bed. The tenant did not have a roommate, nor did it appear to have room for 2 people.

On August 15, 2014 the tenant had moved out and had been housed at a men's shelter. On August 20, 2014 the witness was at the rental complex with another client and saw plywood covering the door to the tenant's rental unit and windows broken.

On August 26, 2014 the witness and the previous witness drove to the rental unit and then picked up the tenant and went back to the rental unit, to see if anything in a trailer was salvageable. The tenant was emotional and didn't take anything.

The landlord testified that the tenant used to paint houses for the landlord, and at the end of May, 2014 the tenant called stating that he needed a place to stay. The landlord told him that he didn't have a place for him, but the landlord has a place in one community which is his primary residence as well as one in another community. He told the tenant could stay at his primary place, which was just a room. The tenant had already spent his rent money for the month. He stated that the two were roommates for about 3 months. At the beginning of August the landlord stopped in after work and a party was happening and the tenant was smoking.

The landlord further testified that on or about August 15 the tenant started packing because the landlord told him that the arrangement wasn't working. The landlord saw boxes of the tenant's belongings and the landlord loaded them into a trailer and covered them with a tarp. The tenant had agreed to move out and he knew the landlord put the belongings there for safety.

The landlord denies putting up plywood over the entrance to the room or locking an animal in there. The person the tenant described as a stranger was a neighbour who had the tenant's dog and had since before the tenant went to the soup kitchen. The landlord also testified that he thought the move-out was amicable and the tenant had plenty of time to retrieve his belongings.

About September 4, 2014 the tenant broke in by breaking a glass panel in the door, a toothpaste tube had been torn open, coffee dumped on the floor and the landlord found blood spots. Photographs have been provided which the landlord testified were taken on September 4, 2014. The landlord spoke to another tenant who said that he caught the tenant in the room and there was an altercation. That's when the plywood was put on the door, not while the tenant's belongings were in the unit.

Sometime between September 4 and 11, 2014 the tenant went back and asked the landlord if the landlord would take the tenant's belongings to a storage facility but the landlord refused to rent a unit for him. The tenant said that he didn't have room for it at his new place. The items that were in the trailer consisted of cat litter, crumpled papers, old CDs, a cat carrier, and clothes but the tenant took his valuables.

The landlord further testified that the tenant did not pay rent for September, 2014.

The landlord owns the entire building, which is considered a single family dwelling, and lives in that room and the furniture in it belongs to the landlord. There is only one kitchen in the house that is used by all tenants, or they use hot-plates or a microwave. There are 4 bathrooms. During the time that the tenant was there, the landlord was there about 2 or 3 times per week and the rest of the time working in another community.

Analysis

Firstly, the landlord has raised a jurisdictional issue that the parties shared accommodation including kitchen facilities. In rental situations where a tenant shares kitchen or bathroom facilities with the owner, the *Residential Tenancy Act* does not apply. I've considered the testimony of the parties and the witnesses. The landlord testified that he was at the rental unit 2 or 3 times per week, but I do not accept that he resided there during the time the tenant resided there. There wasn't room for 2 people, and if the landlord had intended it to be shared accommodation, I do not believe he made the tenant aware of that. Having found that the parties did not share kitchen or bathroom facilities, and by virtue of the fact that the landlord collected rent from the tenant, the *Residential Tenancy Act* applies.

With respect to the tenant's claim for a monetary order, it is not clear when the plywood was erected, however the landlord testified that he wanted the tenant to leave. Where a landlord has cause to end a tenancy, the landlord is required to issue a notice in the approved form and provide sufficient notice. In this case, the landlord didn't do so. Whether the plywood was up earlier rather than later really isn't the issue; the issue is that the landlord ended the tenancy contrary to the *Act*, and I find that the tenant has

established a monetary claim as against the landlord equivalent to one month's rent for that breach. Further, as a result of the breach, it was necessary for the tenant to stay in a men's shelter for a month. If the landlord had ended the tenancy in the manner set out by the *Act*, the notice would not have taken effect until the end of September, 2014, and I find that the tenant is entitled to compensation in the amount of 1 month's rent.

The tenant also claims recovery of the rent paid for August, and the landlord didn't dispute that he kept it, only testifying that the tenant didn't pay rent for September. I find that the tenancy ended on August 15, 2014 and the landlord has retained rent for the entire month, and the tenant is entitled to recovery of half of that amount.

With respect to the tenant's application for an order that the landlord return the tenant's personal property, I am not satisfied that the tenant has established that any of the furniture or items currently in the rental unit or other units belong to the tenant, and that portion of the application is hereby dismissed.

Since the tenancy has ended, the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is also dismissed.

Conclusion

For the reasons set out above, the tenant's applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord return the tenant's personal property are hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00.

This order is final and binding and may be enforced.

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: November 06, 2014

Residential Tenancy Branch

