Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on October 16, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement as aggravated damages.

The hearing was conducted via teleconference and was attended by 4 representatives for the Landlord and both Tenants. The Tenant J.J. affirmed that she was representing both Tenants and as such she provided all of the testimony on behalf of both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa. The Manager P.M provided the majority of the testimony on behalf of the Landlords. Therefore, for the remainder of this decision any singular references made to the Manager will be in reference to evidence provided by P.M.

Each party gave affirmed testimony. Upon review of service of documents the Landlords confirmed receipt of the Tenants' application, notice of hearing documents, and the Tenant's written statement. The Manager submitted that there were some lines on the Tenants' written statement that were faded and illegible. The Tenants stated that they had not received copies of the Landlord's evidence as the address that they had put on their application was a hotel address and is not where they are currently residing. The Tenants did not provide the Landlords with a new service address as they do not currently have an address.

The Manager affirmed that their evidence was sent to the Tenants on November 21, 2014, by registered mail. Canada Post receipts were provided in the Manager's testimony. Based on the Manager's submission, and in light of the fact that the Tenants did not provide the Landlord with a new service address, I find the Landlord's evidence was served in accordance with section 89 of the Act and it will be considered in this decision.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on October 1, 2013. The Tenants were required to pay rent of $750.00 on the first of each month and by September 25, 2013 the Tenants had paid a total of $375.00 as the security deposit.

The Tenants testified that their rent had been paid by Income Assistance from the onset of their tenancy up to May 2014. They acknowledged that no rent had been paid for June 2014 as they had told Income Assistance that they had to move. The Tenant stated that they had been given an eviction notice by the Managers and they had been looking for another place to live; however, they were unable to secure another place by June 1, 2014, so they continued to reside in their unit.

The Tenant submitted that sometime around June 16, 2014 she had lost her keys and the Owner gave permission to let them into their unit. She noted that the other Tenant had lost his keys several weeks prior to June 16, 2014. She stated that when they returned on June 18, 2014 they were told by a neighbour that the Managers had changed the locks and were refusing them access. The Tenant argued that they were not able to call the Owner to discuss gaining entry into their unit because his telephone number was locked inside their suite along with all of their possessions.

The Tenant stated that they had called the Managers on several occasions to try and get their possessions but they were told they could not have their possessions until they paid the Managers $250.00 for storage. The Tenant stated that they were currently homeless and were having to use all their income assistance to pay for motels and had no money to pay the Managers for storage. They have since found out that the Managers threw out all of their personal possessions so they are now seeking compensation for aggravated damages. The Tenant stated that they lost all of their furniture, clothing, personal articles and all of their government identification.

The Manager testified that the Tenants had been issued Notices to end their tenancy on several occasions with the most recent 1 Month Notice being issued for cause on April 1, 2014. She argued that the Tenants were to be out of the unit by April 30, 2014 but when they could not find a place the Owner told the Managers to give the Tenants more time.

The Manager submitted that she was getting calls from other rental units seeking references for the Tenants and that she would tell each person the truth about how the Tenants would party and cause noise. The Manager stated that at the end of May they received a call from someone from another apartment building who said they would give the Tenants a chance for the beginning of June, so they thought the Tenants would move. The Manager stated that when no rent was received for June from Income Assistance the Managers assumed the Tenants had found another place.

The Manager continued her submission stating that the Tenants had not moved out and the Owner had told them to let the Tenants into their unit on June 16, 2014. The Manager stated that on June 17, 2014 they had the locks changed on the Tenants' rental unit and brought in the cleaner to start packing up the Tenants' possessions.

The Manager testified that they had not filed an application to request an Order of Possession and they made no effort to seek a writ of possession prior to changing the Tenants' locks and removing their possessions. The Manager stated that by June 18, 2014 all of the Tenants' possession had been packed and moved downstairs to be stored. The possessions were stored at the building until the beginning of July when they were moved to an offsite storage location. The possessions were kept at the off-site storage for July and August and then where either given away or taken to the refuse/recycling drop off location and discarded.

The Manager submitted that they made no attempt to go through the Tenants' possessions to determine if anything was of importance, they simply packed it up, stored it and then discarded the possessions. The Manager confirmed that they made no lists detailing the possessions prior to storing them; however, they did take some pictures which she did not submit as evidence.

The Manager was insistent that they had not demanded $250.00 from the Tenants before giving them their possessions. She argued that in June 2014, when the Tenants first called to pick up their possessions they had moved the furniture out into the hallway and waited over two hours for the Tenants to come but they did not show up. She later stated that the possessions were taken to the offsite storage on July 3, 2014 and that she had asked the Tenants to pay $105.00 plus $50.00 for storage fees. She submitted that she told the Tenants "when you have the money come and get your stuff".

J.B., the other Manager, testified and confirmed that there was no list made of the Tenants' possessions and he confirmed the testimony that had been provided by his wife and Manager, P.B.

The Owner testified and confirmed that he had been dealing with the Tenants and had let them into the apartment in June 2014. He stated that he could not recall what took place after he let the Tenants in the unit. He stated that his Managers, who act as the landlords, look after his tenants and his buildings on his behalf.

The Landlord's cleaner testified that she was brought into the unit to pack up the Tenants' possessions and move them to the building storage. She indicated that work

was performed on June 18, 19 and 20. She stated that she assisted in moving the possessions to the offsite storage on July 3 or 4, 2014.

The Manager stated that the possessions were removed from the offsite storage by September 19, 2014 as they were of the opinion that they did not have to store them longer than three months.

In closing, the Tenants stated that the Managers demanded that they pay $250.00 before they could get any of their possessions. She noted that they would always speak with the Manager P.B. and the Tenant recalls the Manager's husband J.B. speaking in the background demanding the $250.00 before they could get their possessions. The Tenant stated that they are still currently homeless and are finding it very difficult to replace all of their identification and possessions that had been inside their unit.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 26 (3) of the Act stipulates that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord **must not** seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property. Subsection (3) does not apply if the landlord has a court order authorizing the action, or the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case the Landlord had not been granted an Order of Possession nor had they made any attempt to acquire one. I do not accept the Manager's submission that the Tenants had found another place to move too, as the Tenants had resided in the unit on the evening of June 16, 2014, and had returned June 17, 2014 to try and gain access to the unit that still housed all their possessions. Furthermore, the Manager testified that that the Tenants had not moved out and the Owner had told them to let the Tenants into their unit on June 16, 2014.

Part 5 Section 24 (1) of the Regulations stipulate as follows:

24 (1) A landlord may 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 <u>and</u> 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.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

> (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
> (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
>
> [my emphasis of bolding added].

The undisputed facts are that the Tenants' rent for May 2014 had been paid in full by Income Assistance and no rent had been paid for June 2014. At the time the Managers changed the locks on June 17, 2014; the Tenants were continuing to reside in the unit and had occupied the unit throughout the evening of June 16, 2014. Therefore, the Managers could not have considered the unit abandoned as the Tenants had not vacated the unit or failed to pay rent for a continuous period of one month, as required by section 24(1) of the Regulations.

Based on the above, I find the Managers' actions of seizing possession of the rental unit and the Tenant's possessions, and refusing the Tenants access to the unit and their possessions to be an egregious breach of section 26(3) of the Act.

Furthermore, if in a case where the conditions of section 24 of the Regulations had been met, Section 25(1)(b) of the Regulations stipulates that a landlord must keep a written inventory of the property. No inventory of the Tenants' possessions was created or kept by the Managers.

Section 55 (2)(b) of the Act provides that a landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the landlord and either the tenant has not disputed the notice in accordance with the Act and has failed to vacate the property in accordance with the notice, or the landlord has met the burden of proof to obtain possession of the unit.

I do not accept the Managers' arguments that this tenancy ended April 30, 2014 after the Tenants were issued a 1 Month Notice. The issuance of a notice under section 47 of the Act does not automatically grant a landlord possession of the rental unit, as landlords must make application to obtain an Order of Possession as provided under section 55 of the Act. In this case the Landlord did not file an application for Dispute Resolution to obtain an Order of Possession of the rental unit they simply changed the locks and seized the Tenant's possessions.

Furthermore, a Notice to End Tenancy can be waived and a new or continuing tenancy created, by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent. If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue.

In these circumstances the Tenants paid their rent in full for May 2014, which was after the effective date of the Notice and there was no evidence that the Landlord issued a receipt to indicate the payment was received for use and occupancy only. Furthermore, the Owner had told the Managers to allow the Tenants continued access to the unit until the Tenants had found another place. Therefore, based on the foregoing, I find that this tenancy had been reinstated after the April 2014 1 Month Notice was served.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 (1) of the Act stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>> (i) the purpose for entering, which must be reasonable;
>> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> (d) the landlord has an order of the director authorizing the entry;
> (e) the tenant has abandoned the rental unit;
> (f) an emergency exists and the entry is necessary to protect life or property.

In this case there was no evidence before me that would have justified or granted the Managers authority to end the Tenants' rental unit on June 17, 2014. Therefore, I find the Managers breached sections 28 and 29 of the Act.

Section 31(1) of the Act provides that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

Based on the above, I find the Managers breached section 31(1) of the Act when they seized possession of the unit and changed the locks on June 17, 2014.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

In this case I find the Managers, in their capacity as Landlord and Agent for the Owner, had knowledge of the Residential Tenancy Act and Regulations, as they used eviction notices governed by the Act and quoted sections of the Regulations with respect to storage of a tenant's possessions. I further find the Managers made a conscious decision when they seized the rental unit and discarded all of the Tenant's personal possessions, while demanding money as payment for storage. I find those actions to be the most egregious act a manager or landlord could commit.

I have found above that the Managers, in their capacity as landlords, have committed egregious breaches of sections 26, 28, 29, and 31 of the Act, in addition to breaching section 24 of the Regulations. Therefore, I award the Tenants the full amount of compensation claimed for aggravated damages in the amount of **$4,900.00.**

Conclusion

The Tenants have been awarded a Monetary Order for **$4,900.00.** This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: December 04, 2014

Residential Tenancy Branch