



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC, OPB, MNR, MNSD, MNDC, FF
Tenant: MNDC, AAT, O

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought an order to have the landlord return personal possessions and a monetary order.

The first hearing was conducted via teleconference and was attended by the tenant's legal counsel and the landlord. That hearing was convened based on the tenant's Application for Dispute Resolution only.

At the outset of the first hearing the parties indicated that they had spoken and had agreed to request an adjournment so that the landlord could have her Application for Dispute Resolution processed and set to be heard at the same time as the tenant's Application. I granted the adjournment.

The second hearing was also conducted via teleconference and was attended by the tenant; his legal counsel and the landlord. The landlord had arranged for a witness, however the witness was not called for testimony.

At the outset of the second hearing I confirmed with the parties that the landlord now had possession of the rental unit and as such, the landlord no longer required an order of possession. I amended the landlord's Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord to return personal possessions; to a monetary order for return of double the security deposit and for the return of October 2014 rent, pursuant to Sections 38, 44, 62, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to a monetary order for lost revenue; cleaning of the rental unit and property; storage costs for the tenant's personal property; propane; and late fees; for all or part of the security deposit and to recover the filing fee

from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on August 5, 2012 for a 1 year fixed term tenancy beginning on September 1, 2012 that converted to a month to month tenancy on September 1, 2013 for the monthly rent of \$1,200.00 due on the 5th of each month and that a security deposit of \$600.00 was paid.

The tenancy agreement contained an addendum with 10 additional terms. Terms that are relevant to this hearing included a clause requiring the tenant to pay:

- A fee of \$25.00 for the late payment of rent, and
- The landlord \$40.00 per month for the use of propane and that this payment would be used to pay for propane costs up to a maximum of \$600.00.

The parties agreed that the tenant owed the landlord \$50.00 in late fees (September and October) and \$400.00 for propane costs.

The parties also agreed on the following:

- The landlord had informed the tenant in September 2014 that she intended to sell the residential property;
- The tenant informed the landlord that as a result he would start looking for a new place to live;
- The tenant had failed to pay rent for the month of October by October 5, 2014 when it was due;
- The parties did not speak to each other until October 8, 2014;
- The landlord attended the residential property on October 8, 2014 and determined the tenant had abandoned the property; removed the tenant's remaining belongings from the property; and changed the locks;
- The tenant paid the landlord rent for the month of October on October 9, 2014; and
- The landlord still has the tenant's possessions in storage – while the landlord provided a list of items she has, the tenant did not. During the hearing the tenant indicated that he had a list but it included additional items.

The landlord testified that she had contacted the Residential Tenancy Branch on October 8, 2014 after she attended the property to find out what she should do and she was referred Sections 24 and 25 of the Residential Tenancy Regulation.

She states that with the exception of some dishes and garbage left inside the rental unit it appeared to her that the tenant had removed all of his possessions from the interior

of the rental unit. She acknowledged that the tenant had left behind his vehicle; a bike; a trailer and some work tools and ladders.

The landlord submits she relied upon Section 24 to determine the rental unit was abandoned and that she therefore had the right to change the locks and put the tenant's belongings left behind into storage.

The tenant testified that he hadn't paid the rent or contacted the landlord as he was in another community with his daughter who was receiving medical treatment. He states that he attempted to contact the landlord as soon as he returned.

The tenant submits that he found a new place to live and was able to start moving his belongings to the new rental unit. He states that while he was moving his belongings he was staying at his girlfriend's place. He testified that he had not provided the landlord with a notice to end tenancy and that he had hoped to work something out to end the tenancy in mid-November 2014. The tenant submits that because the landlord had changed the locks he was not able to remove to return the rental unit to clean it up as he had intended to do.

The tenant's written submissions states that "in an effort to recover his wrongfully seized property the tenant did pay \$1,200.00 rent for the period of October 5, 2014-November 5, 2014" [reproduced as written].

The landlord, in her written submission states "Although the payment of rent was due on the 5th, the agreement is month to month starting the 1st and so his \$1,200.00 was for October 1st through October 31st. The Tenant asked for his trailer plate in exchange for a partial payment of the money owed, October's rent. The agreement was completed to both parties satisfaction with a cheque to the landlord dated October 9, 2014 and the return of the expired license plate to the tenant" [reproduced as written].

The landlord seeks the following additional compensation:

- Lost revenue for the month of November 2014 - \$1,200.00;
- Locks changed for "re-possessing of house" - \$55.13;
- Removal of abandoned belongings (towing) - \$157.50;
- Storage of personal belongings - \$200.00;
- Cleaning and dump - \$90.00; and
- Yard maintenance - \$125.00.

The tenant seeks return of rent paid for October 2014 as he feels the landlord wrongly determined that the rental unit had been abandoned and it was she who ended the tenancy by failing to allowing him access to the rental property, even after he had paid the rent for October 2014. The tenant also seeks return of his security deposit.

Analysis

The be successful in a claim for loss or damages resulting from a violation of the Act, regulation or tenancy agreement the party making the claim has the burden of providing sufficient evidence to establish:

1. That damage or loss exists;
2. That the damage or loss has resulted from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any to mitigate the damage or loss.

I accept, from the testimony of both parties, that the landlord is entitled to receive from the tenant \$50.00 for late fees and \$400.00 for propane, as noted above.

Section 44(1) of the *Act* stipulates a tenancy ends only if one or more of the following applies:

- (a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) Section 45 *[tenant's notice]*;
 - (ii) Section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) Section 47 *[landlord's notice: cause]*;
 - (iv) Section 48 *[landlord's notice: end of employment]*;
 - (v) Section 49 *[landlord's notice: landlord's use of property]*;
 - (vi) Section 49.1 *[landlord's notice: tenant ceases to qualify]*;
 - (vii) Section 50 *[tenant may end tenancy early]*;
- (b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) The landlord and tenant agree in writing to end the tenancy;
- (d) The tenant vacates or abandons the rental unit;
- (e) The tenancy agreement is frustrated;
- (f) The director orders that the tenancy is ended.

Section 24 of the Residential Tenancy Regulation states

- (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 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.
- (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.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

Section 14.3 of A Guide for Landlords & Tenants in British Columbia (published by the Residential Tenancy Branch) entitled "When the Tenant Abandons the Unit" states that abandonment occurs when the tenant gives up the tenancy and possession of the rental unit without properly giving notice to the landlord. Where the rent has been paid, a landlord cannot determine abandonment.

A tenant who is going to be away for an extended period should let the landlord know and make arrangements to have the rent paid. Otherwise, a landlord may believe the tenant has abandoned their possessions and the tenancy.

Where the rent has not been paid, the landlord could determine abandonment if:

- The tenant removes his/her possessions from the building;
- The tenant told the landlord that he/she does not intend to return; and/or
- Circumstances are such that the tenant is not expected to return.

When a tenant abandons the unit and owes rent, the landlord can submit an Application for Dispute Resolution asking for the rent and other costs such as cleaning.

Section 24 of the Residential Tenancy Regulation speaks specifically to the issue of the abandonment of personal property by a tenant at the end of a tenancy. As such, I find that it cannot be relied upon as a definition of abandonment of the tenancy. However, I find it can be used as a *guideline* to help determine if a residential property has been abandoned. I also note that Section 14.3 of A Guide for Landlords & Tenants in British Columbia provides additional guidance.

From these sources and in the case before me I find the landlord relied upon the clause "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" to determine the tenant had abandoned the property.

From the testimony of both parties, I accept the tenant did not provide the landlord with any notice an intention to end the tenancy. I find the tenant has provided a plausible explanation of what he was planning on doing, including later discussing with the landlord about ending the tenancy in mid-November 2014 and that the landlord has provided no evidence to contradict the tenant's plans.

I also find, based on the tenant's testimony and the detail of the items "left behind" provided by the landlord that in fact the tenant was planning to return to the residential property to both finish removing his belongings and clean the residential property. I find also that once the tenant paid rent for the month of October 2014 (October 5 – November 4, 2014) and despite the landlord's original thought that the property was abandoned the landlord actually reinstated the tenancy and therefore could no longer consider the property abandoned.

As a result, I find the landlord ended the tenancy when she changed the locks on the rental unit and refused access to the tenant. I also find the tenant should have been provided with access to the rental unit in order to clean and finish off his tenancy by either providing the landlord with a notice to end the tenancy in accordance with Section 45 [tenant's notice] or by mutual agreement pursuant to Section 44(1)(c).

Therefore, I find that since the landlord refused the tenant access to the rental unit after the payment of rent on October 9, 2014 the tenant is entitled to a return of the rent he paid for the period of October 5, 2014 to November 4, 2014.

I also find, as a result, that the landlord is not entitled to any storage or towing costs as the tenant's personal property could not be considered abandoned because the tenant had not abandoned or vacated the rental unit.

As an additional result, I find the landlord's actions prevented the tenant from being able to return to the residential property to complete any cleaning he may have wanted to do. Further, I find that because the landlord ended the tenancy by changing the locks and despite her testimony that the tenant could have returned to the property to complete yard work, the landlord had taken possession of the residential property and the tenant would have no authority under law to enter the property.

As I have found the landlord ended the tenancy and not the tenant, I find the landlord is not entitled to lost revenue as she has failed to establish the loss of revenue resulted from a breach of the *Act*, regulation, or tenancy agreement by the tenant.

I therefore dismiss the landlord's claim for lost revenue; for storage and removal costs; and for cleaning and yard work costs. As the landlord was largely unsuccessful in her Application for Dispute Resolution I dismiss her claim to recover the filing fee.

And finally, I order the landlord to return all personal possessions immediately to the tenant. If the landlord fails to return all of the tenant's personal items the tenant remains at liberty to file an Application for Dispute Resolution seeking compensation for any losses he may suffer as a result.

I find the landlord is therefore entitled to compensation in the amount of \$450.00; that the tenant is entitled to return of rent in the amount of \$1,200.00 leaving a balance owing to the tenant of \$750.00. As I have found that there are no other funds owing to

the landlord I order the landlord must return the tenant's security deposit in the amount of \$600.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,350.00** comprised of the balance of rent to be returned and the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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 19, 2014

Residential Tenancy Branch

