



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OPT, AAT, LAT, SS

Introduction

The tenant applies for a monetary award for damages for an alleged breach of the landlord's legal duties and for return of her security deposit. She also seeks relief in the nature of access and locks.

The landlord has an order of possession effective November 30, 2014. That order was issued by me on November 20, 2014 under the landlord's application and by agreement between the parties at that hearing. At this hearing the tenant confirmed that she has vacated the premises and is now living elsewhere but has a few possessions and a vehicle still at the premises. It was agreed at this hearing that she would have all her possessions removed from the rental unit, the car removed from the parking lot and the keys to the rental unit left on the kitchen counter all before seven o'clock in the evening on this day. The landlord confirmed that he is available to provide the tenant with access to the storage area in the apartment building upon her request, so as to retrieve any of her remaining belongings that might be there.

As this tenancy has ended, the tenant's claims for access and a lock change are dismissed as now moot.

The tenant claims recovery of the security deposit. That claim is dismissed. The deposit was assigned to the landlord in reduction of the monetary award granted to him at the earlier hearing.

The remainder of the tenant's application is dismissed with leave to re-apply. The tenant failed to comply with s. 59(3) of the *Residential Tenancy Act* (the "Act") which mandates that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. This application was made on November 12, 2014. The tenant failed to serve it until November 28th, when it was mailed to the landlord by

registered mail. I am not empowered to grant relief from non-compliance with this requirement except perhaps when the failure to comply has been caused by an administrative failure (see *Hyland Homes Ltd. v Thomas Pickering et al*, 2000 BCSC, 524 (Downs, J.)). That is not the case here and so non-compliance with s. 59(3) renders the application of no effect.

The tenant has also failed to comply with the Rules of Procedure. She has filed her documentary evidence (apparently in excess of 100 pages) only yesterday when the Rules (Rule 3.14) requires that evidence be filed not less than 14 days before the hearing. She failed to supply the landlord with a copy of that material until December 8th, deemed to have been received by s. 90 of the *Act* on December 11th, well past that 14 day period (it is noted that the landlord denies having received the material from the building manager the tenant says she served it on).

Additionally, it appears the tenant intends to advance claims relating to events that occurred after the application was made, regarding withholding of funds preventing her from vacating at the end of November as she had agreed to do at our last hearing. The particulars of that claim have not been set out in her application. They must be set out so that the respondent landlord can properly confront them and an arbitrator can deal with them.

Lastly, the tenant requested an adjournment of this hearing so that she could compel the attendance of the building manager Mr. R.. She was unable to persuade me of what use Mr. R.'s evidence might be to her claim. Her request for an adjournment was denied. However, she is free to apply for the necessary summons under any re-application if she can satisfy that arbitrator that Mr. R. has some evidence of value to her case, as opposed to evidence Mr. R. might give in support of the landlord's position.

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 16, 2014

Residential Tenancy Branch

