



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, MT, CNC, OPT, AAT

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for an order of possession for unpaid rent, damage and loss as a result of the tenancy; a monetary order for unpaid rent; authorization to retain the tenant's security deposit, as well as recovery of their filing fee in this application.

The tenant applied for more time to make his application; to cancel the notice to end tenancy; as well as a monetary order for damage or loss as a result of this tenancy; an order of possession for the rental unit; and authorization to allow access for the tenant or the tenant's guests.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The hearing began with the tenant's witness on the teleconference line. He was excused and he stated he would be available when his testimony was required. He was not available when contacted later in the hearing.

Preliminary Matter – Service of Documents and Tenant application for More Time

Landlord RE testified that she personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on December 5, 2014. The tenant denied receipt of the 10 Day Notice; however, Landlord AM testified that he witnessed the service of the 10 Day Notice. Pursuant to section 88 of the *Act* and based on the sworn testimony of both landlords and the documentary evidence provided, I find the tenant duly served with the 10 Day Notice on December 5, 2014.

Landlord RE also testified that she served the tenant with the landlords' Application for Dispute Resolution package with Notice of Hearing on January 29, 2015. Landlord RE

testified that she knocked on the tenant's door but no one answered. She testified that she placed the Application for Dispute Resolution package in the tenant's mailbox. The tenant testified that he received the package later that same day. Based on the evidence and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlords' Application for Dispute Resolution.

The tenant testified that he personally served his Application for Dispute Resolution package to Landlord AM on January 19, 2015. The tenant applied for more time to apply with respect to his application to cancel the notice to end tenancy. He provided an explanation as to why his application was filed over one month after the 10 Day Notice was served. He claims that he had difficulties in applying for cancellation of the notice to end tenancy because he was very ill and he was struggling with his battle with the landlords. The tenant testified that he was locked out of his residence by the landlords for 5 days between January 19, 2015 and January 24, 2015.

Section 66 of the *Act* requires exceptional circumstances to extend the time limits with respect to dispute resolution applications. While the tenant was locked out of his residence for a period of 5 days, I note that the notice to end tenancy was served to him on December 5, 2014 and that he had over one month to file his application prior to being locked out of his residence. In fact, he filed his application on the day that he was locked out of the residence. While those circumstances might be exceptional, they do not account for the tenant's failure to file within the regular timelines. I decline to allow the tenant's application for more time to file his application and dismiss his application to cancel the notice to end tenancy.

As the tenant has testified that, as of January 24, 2015, he has regained access to his rental unit, he withdrew his application with respect to an Order of Possession and access to the rental unit.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for damage or loss as a result of this tenancy?

Background and Evidence

Landlord RE gave evidence that this month to month tenancy for the premises began on July 10/2014. The rental amount for this unit is \$1180.00. Landlord RE testified that she continued to hold the \$590.00 security deposit that the tenant paid on June 29, 2014.

The landlords have applied for an Order of Possession for unpaid rent for the month of January 2015. The landlord testified that the tenant did not pay rent of \$1180.00 due on January 1, 2015. The landlord testified that the tenant only paid partial rent in December 2014. The landlord testified that, as of the date of this hearing, the tenant still has not paid full rent for December 2014, January 2015 or February 2015.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. Landlord RE testified that the tenant did not pay any rental amount after receiving the 10 Day Notice on December 5, 2014. After the expiration of that 10 Day period, the landlords applied for an Order of Possession.

Landlord RE pointed to the Mutual Agreement to End Tenancy submitted with the landlords' documentary evidence. This agreement was dated January 25, 2015 and Landlord RE's undisputed testimony was that it was signed by the tenant. The landlords both pointed to the top of this agreement where it is written "Agree to move out on Jan 31/ 2015". The landlords both testified that this was written by the tenant. The tenant confirms that he signed the agreement but submitted that he scratched out the title, "Mutual Agreement to End Tenancy" because he was distraught and under duress at the time.

The tenant's undisputed sworn testimony was that he was locked out of the residence for a period of 5 days from January 19, 2015 to January 24, 2015. He testified that he only regained access to the rental unit when he attended the property with a locksmith and the police. He claims that during the period of time that he was not residing at the rental unit, he accrued monetary damages in hotel and food bills as well as lost wages. He provided receipts that indicate he incurred hotel and food expenses totaling \$505.40 for 3 nights. He testified, supported by documentary evidence, that he stayed at a friend's for 2 nights and that friend charged the tenant \$200.00 for those 2 nights. The tenant also testified that he had other expenses associated with eating out and additional gasoline costs of approximately \$225.00. He submits that he was illegally evicted and that his quiet enjoyment of the residence was disturbed by this eviction. He further claims that the landlords have harassed him by text message, by towing his car and by threatening to throw his belongings out. The landlords conceded the tenant's

evidence that he was locked out of the rental unit and that his car was towed. They provided no testimony with respect to the other allegations.

Analysis

The tenant did not dispute the testimony of the landlords that he failed to pay the December rent within five days of receiving the 10 Day Notice to End Tenancy. He also did not dispute that he has not paid January or February rent. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 15, 2014. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

Based on the undisputed evidence provided by the landlords, I find that the landlords are entitled to receive an order for unpaid rent in December 2014, January and February 2015. I find the landlords served the notice to end tenancy and the prior warnings to the tenant with respect to unpaid rent. The tenant did not dispute that rent remains unpaid. I am issuing the attached monetary order that includes the landlords' application for \$2790.00 in unpaid rent for December, January and February.

Landlord RE testified that she continues to hold a security deposit of \$590.00 plus any interest from July 10, 2014 to the date of this decision for this tenancy. There is no interest payable for this period. I will allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

I have dismissed the tenant's application to cancel the notice to end tenancy and the tenant has withdrawn his application for an order of possession and access to the rental unit. I will consider the tenant's application for monetary compensation for losses as a result of the landlord's actions with respect to this tenancy.

Section 30 of the *Act* provides that a landlord must not unreasonably restrict the tenant's access to the residential property or rental unit. Section 31 of the *Act* prohibits a landlord from changing locks or obstructing the tenant's access to the rental unit and residential property by any means.

I refer to Residential Tenancy Policy Guideline No. 7 that explains the rights and responsibilities of both landlords and tenants with respect to access to the rental unit. It states that, "[i]n some circumstances, where there has been substantial interference

with the tenant's use and enjoyment of the property, it may be appropriate for the tenant to be awarded damages for unlawful entry in addition to, or rather than, a change of locks. A tenant's right to quiet enjoyment includes exclusive possession of their rental unit, subject to the landlord's right of entry. Refusing a tenant access to a part or all of the property is considered to be an interference with a tenant's right to quiet enjoyment. The Residential Policy Guidelines state that an arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

I find that the tenant has shown that he incurred expenses as a result of being locked out of his residence by the landlords. I also note the tenant's testimony, confirmed by the landlords, that he attended the property with the police and a locksmith to regain access to his rental unit.

I find that the landlords locked out the tenant in contravention of the Act and that the tenant should be reimbursed for those expenses in a reasonable manner. Given these circumstances, supported by evidence submitted by the tenant, I find the tenant is entitled to compensation for his expenses and the effect on his right to quiet enjoyment. I award the tenant \$505.40 for his hotel and food expenses. I award the tenant an amount of \$190.00 for 5 days of rent. I award the tenant \$225.00 to reflect expenses for the 3 other days he did not have access to his residence and had to make other plans for accommodations. I award the tenant an additional \$250.00 to reflect a loss, beyond rent, of quiet enjoyment of his residence. These amounts are to be deducted from the rental arrears owed to the landlords.

As both parties were partially successful in their applications, I decline to award the recovery of filing fees in this matter.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for December 2014	\$430.00
Rental Arrears for January 2015	1180.00

Rent for February 2015	1180.00
Less Security Deposit (no interest)	-590.00
Less Award to Tenant for lock-out	-1170.40
Total Monetary Award	\$1029.60

The landlords are provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: February 17, 2015

Residential Tenancy Branch

