



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, LRE, OPT, AAT, LAT, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied:

- for a monetary Order for money owed or compensation for damage or loss
- for an Order requiring the Landlord to provide the Tenant with access to the rental unit
- for an Order of Possession for the rental unit
- for authorization to change the locks to the rental unit
- for an Order suspending or setting conditions on the Landlord's right to enter the rental unit
- to recover the filing fee from the Landlord for the cost of filing this application.

At the hearing the Tenant withdrew the application for an Order of Possession for the rental unit, for authorization to change the locks to the rental unit, and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit. He stated that he no longer wishes to occupy the rental unit.

The Tenant stated that on February 06, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

On February 04, 2015, February 19, 2015, and February 20, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence.

The Tenant stated that on February 19, 2015 the amended Application for Dispute Resolution and all of the documents he submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

On February 19, 2015 the Landlord submitted documents to the Residential Tenancy Branch. The Tenant stated that the Landlord did not serve him with evidence for these proceedings. As

there is no evidence that the Landlord's documents were served to the Tenant, the documents have not been considered when rendering this decision.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being prevented from using the rental unit?
Is there a need to issue requiring the Landlord to provide the Tenant with access to personal possessions he left in the rental unit?

Background and Evidence

The Tenant stated that this tenancy began on May 01, 2013 and that he agreed to pay rent of \$700.00 by the first day of each month.

The Tenant stated that he typically paid his rent with post-dated rent cheques; that the Landlord cashed his rent cheque for February of 2015; and that he has placed a "stop payment" on his rent cheques for March and April of 2015.

The Tenant stated that sometime in January of 2015 he received a six page document from the Landlord, dated January 25, 2015, which he submitted as evidence. In this unsigned document the Landlord outlines a variety of problems with the tenancy and informs the Tenant that "this letter will serve as your one month eviction notice".

The Tenant stated that the Landlord did not serve him with a proper Notice to End Tenancy and that this tenancy has not been the subject of any previous dispute resolution hearings. He stated that he has never served the Landlord with notice to end the tenancy.

The Tenant stated that on February 18, 2015 the Landlord boarded up the door that leads to the electrical panel, the furnace, and the main water valve, which prevented him from accessing this area.

The Tenant stated that when he returned to the rental unit on the evening of February 18, 2015 he determined that the electricity had been turned off; the furnace had been shut off; and that the water had been turned off. He stated that he opted to stay elsewhere that evening, as he was unable to restore these services.

The Tenant stated that he returned to the rental unit on February 19, 2015 at which time he determined that his key did not work. He stated that he returned to the rental unit with the police on February 20, 2015 at which time he was able to access the rental unit with his key. He stated that the police told the Landlord she should turn the power/water/heat back on but she did not do so.

The Tenant stated that he returned to the rental unit on February 21, 2015 at which time he determined that his key did not work again. He stated that he was able to access the rental unit with the assistance of the police, at which time he received a different key to the rental unit and he was able to remove a few personal items. He stated that the police recommend that he not remain in the rental unit.

The Tenant stated that he returned to the rental unit on February 23, 2015 at which time he noted the power was on but the water and the heat were still not working. He stated that he left

after approximately four hours and when he returned later that evening the power had been turned off again.

The Tenant stated that the Landlord was at the rental unit when he returned on the evening of February 23, 2015 and she was removing some of his personal property. He stated that he got into a physical altercation with a male who was with the Landlord and he was subsequently arrested for assault. He stated that as a result of the arrest he is under a Court Order not to attend the rental unit.

The Tenant is seeking compensation, in the amount of \$2,400.00, for the cost of residing elsewhere temporarily. He stated that a large sporting event was recently being held in his community so he was unable to find lodging in that community. He stated that he has to drive approximately 1.5 hours to a neighbouring community where he stays with his sister, whom he has paid \$1,600.00 for room and board. He stated that he has to drive approximately 1.5 hours to the neighbouring community for which he is claiming compensation of \$80.00 per day for the time and cost of travel.

The Tenant also claimed compensation, in the amount of \$600.00, for the cost of replacing personal items. At the hearing he withdrew this portion of his claim, as after he filed this claim for compensation he was able to access the unit and retrieve some personal items.

The Tenant is also seeking an Order requiring the Landlord to return his personal property. He stated that since he is unable to attend the rental unit as a result of a Court Order, arrangements will have to be made to have his property returned to a third party.

Analysis

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, and 49.1 of the *Act*. When either party gives notice to end tenancy, the notice must comply with section 52 of the *Act*.

On the basis of the undisputed evidence, I find that the Landlord gave the Tenant a six page document, dated January 25, 2015, which the Landlord declared was a "one month eviction notice". I find that the document dated January 25, 2015 does not comply with section 52 of the *Act* because it is not signed by the Landlord and it is not in the approved form. I find that the format used by the Landlord significantly affects the substance of the form as it does not, for example, inform the Tenant of his right to dispute the Notice to End Tenancy. As the document dated January 25, 2015 does not comply with section 52 of the *Act*, I find that the Landlord cannot rely on this six page document to end the tenancy.

I therefore find that this tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if 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. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the

tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. As there is no evidence that the Tenant abandoned the tenancy and the evidence shows he has not yet removed his property from the rental unit, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. I order that this tenancy ends today, March 03, 2014.

Section 30(1) of the *Act* stipulates that a landlord must not unreasonably restrict a tenant's access to a rental unit. On the basis of the undisputed evidence, I find that the Landlord breached this section when she changed the locks on February 19, 2015 and February 21, 2015, even though she subsequently provided him with a key on February 21, 2015.

Section 27(1)(a) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation. On the basis of the undisputed evidence, I find that the Landlord breached this section when she turned off the power, water, and heat on February 18, 2015 and made modifications to the residential complex that prevented the Tenant from restoring these essential services.

Section 28 of the *Act* entitles a tenant to quiet enjoyment of the rental unit, which includes freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's legal right to enter the rental unit; and the use of common areas for reasonable and lawful purposes, free from significant interference. I find that the Landlord's actions have breached this section.

I find these breaches were so serious that they effectively prevented the Tenant from occupying the rental unit since February 18, 2015.

The Tenant has not sought compensation for loss of quiet enjoyment of the rental unit, however he is seeking direct costs associated with his inability to occupy the rental unit. Section 67 of the *Act* authorizes me to compensate a tenant if he suffers a loss as a result of a landlord breaching the *Act*.

On the basis of the undisputed evidence, I accept that the Tenant suffered significant losses as a result of these breaches. Specifically, the Tenant had to travel to a neighbouring community for accommodation, which was a round trip of 3 hours, and he had to pay his sister room and board of \$1,600.00. I find the claim of \$2,400.00 to be reasonable compensation for the time and expense of travelling to a neighbouring community and for the cost of alternate accommodations and I grant this portion of the Tenant's claim, in full.

I hereby order the Landlord to return all of the property left in the rental unit by the Tenant to a third party named by the Tenant, upon receiving written authorization to release the property to the third party named in the written authorization. This order is made pursuant to sections 26(3) and 65(1) of the *Act*.

I direct the Tenant to provide the Landlord with written notice of the time and date he would like the property returned, which must be between 9 a.m. and 9 p.m. The Tenant must provide the

written notice at least one week prior to the date the property is to be returned.

I find that the Tenant's Application for Dispute Resolution has merit and that he is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$2,450.00, which is comprised of \$2,400.00 for the expense of living in alternate accommodations and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I grant a monetary Order in that amount. In the event that the Landlord does not voluntarily 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.

The Landlord is obligated to return the Tenant's personal property in accordance with the terms set out in this decision.

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: March 03, 2015

Residential Tenancy Branch

