



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MNDC, RR, O

Introduction

This hearing dealt with an application by the tenant for a monetary order; an order reducing past or future rent for services, facilities or repairs agreed upon but not provided; and an order allowing the tenant access to the rental unit. Only the tenant appeared at the hearing.

The tenant testified that he left the Application for Dispute Resolution and Notice of Hearing with one of the landlord's employees at the counter in the landlord's place of business. He could see the landlord but the landlord refused to come to the counter. I found that the landlord had been properly served with the documents and proceeded with the hearing.

Issue(s) to be Decided

- Should an order granting access to the rental unit be made and, if so, on what terms?
- Should a monetary order be made and, if so, in what amount?
- Should any other order be made and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced July 20, 2014. The tenant says there was a written tenancy agreement which named he and his partner as co-tenants. The monthly rent of \$780.00 was due on the first day of the month. The tenants paid a security deposit of \$390.00.

The tenants testified that when they moved in the refrigerator did not work. They called the landlord and after a few days it was repaired. After a couple of days it quit working again. The tenants say they went without a refrigerator until the end of August.

The male tenant says he was away for all of September and part of October. During this time the female tenant stayed at her daughter's. When he returned to the rental

unit he saw that his truck, which he left in the designated parking stall, was missing. The female tenant told him that she noticed it missing at the end of September. The male tenant says he spoke to the landlord who told him they had taken the truck as security for rent.

The male tenant says he did not do anything else about the truck at that time because his six-year-old son was very ill and his attention was not focused on material things.

The agreement was that the hydro account would be placed in the tenants' names. According to the female tenant BC Hydro would not allow the account to be placed in their names without the landlord's permission because the previous tenants had not paid their bills. The tenants say they kept asking the landlord to make the necessary arrangements with BC Hydro but he never did. Finally, at the end of October the hydro was cut off.

The tenants say that when they spoke to the landlord about the hydro he said pay the rent and I'll call hydro.

For the first three weeks after the hydro was disconnected the male tenant continued to live in the rental unit. After that he stayed at friends' homes only occasionally going back to the rental unit to pick up items. The female tenant stayed with her family.

On or about December 18 the male tenant went to the rental unit and discovered that the locks had been changed. He called his parents, who live in another part of the province. He went to visit them without taking any steps about the rental unit or his belongings and stayed until the end of the holidays.

The male tenant says that he is on probation and one of the terms of his probation order is that he maintains a residence. For that reason, it was very important that he have an address. He says he paid the rent, in cash, up to and including December, even though there was no power in the unit. In his written submission he said he did not have the time or opportunity to look for more suitable accommodation. The tenants say they never received any receipts for payments made.

The male tenant says he tried to pay the January rent but the landlord refused to accept it. However, he left the money with one of the landlord's employees at his place of business.

In February he heard that someone else was living in the unit.

On or about February 5 he went to the local BC Service Centre to file this application for dispute resolution. At the suggestion of the Service Centre staff he reported the missing truck to the RCMP.

When asked about his delay in taking any action the tenant replied that he is of native ancestry and he has had many negative experiences with courts, police and government institutions. Going to any of these offices caused him great anxiety. For that reason he tried to settle matters on his own by talking to the landlord rather than going to the police or the Residential Tenancy Branch.

The tenant said his unit was a 2001 Dodge Ram 4 X 4 half-ton truck with 168,000 kilometers to which he had added a headache rack and a dry box. When it was parked at the rental unit it was uninsured. He estimated its' value at \$6,000.00 to \$7,000.00.

The tenant says the contents of the rental unit included a bedroom suite, a living room suite, two televisions, and family heirlooms. He estimated the value of his belongings at \$17,500.00.

He also testified that there was up to 50 salmon in the freezer before the hydro was disconnected. He estimated the value of the fish at \$2000.00. The tenant said he did not have anywhere else to take the fish so could not save them.

The female tenant testified that at the end of December she tried to talk to the landlord about returning their belongings. She was referred to an office in Vancouver. When she called the Vancouver office she was referred back to the landlord. She corroborated the male tenant's description of his belongings.

Analysis

Clearly, it is too late to make any order for access to the rental unit by the tenants.

Section 7(1) states that if a landlord or a tenant does not comply with the Act, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Subsection (2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

The tenant's approach to protecting his property and minimizing any loss he may suffer could be described as casual. His explanation that his life experiences make him reluctant to utilize legal remedies does have some credence but his delay in taking any action makes his claim much more difficult. Certainly, shortages of time or inability to

get around are not factors in his delay, as he was able to travel to other parts of the province for significant periods of time.

From the tenant's own evidence it appears that he was hardly at the rental unit in September, October, November or December and that even when confronted with a missing motor vehicle and changed locks he did not take any action to retrieve his property. In light of these circumstances the landlord may have concluded that the tenants had abandoned the unit and taken possession of the tenant's personal belongings.

The *Residential Tenancy Regulation* sets out the procedure to be followed by a landlord who takes custody of a tenant's personal belongings including the landlord's obligation to:

- Store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal.
- Keep a written inventory of the property.
- Keep particulars of the disposition of the property for two years following the date of disposition.
- Advise a tenant or a tenant's representative requesting the information either that the property is stored or has been disposed of.

The *Regulation* also specifies that before disposing of seized property the landlord must publish a notice in the newspaper in the area in which the residential property is situated that contains certain information as specified in the *Regulation*.

Even though the tenant did not apply for the return of his personal property I think that is the appropriate remedy in these circumstances. **I order the landlord** to return the tenant's personal property to him; or if the tenant's personal property has been disposed of by the landlord, to provide the tenant with a full accounting of the funds received from the disposition and the application of those funds, together with a copy of the newspaper notice of the disposition; within 15 days of being served with this decision.

If the landlord does not return the personal property or the documentation as required; or if the documentation reveals that the landlord did not comply with the *Regulation*; the tenant may apply to the Residential Tenancy Branch for compensation for loss of his personal possessions. If the tenant makes such an application it is suggested that he provide a more complete inventory and more evidence of value than he did in this hearing.

No order for compensation for lack of electricity will be made. Not only was the tenant's evidence not very clear and were not supported or explained by any documentation from BC Hydro, he failed to take any steps to minimize any damage or loss.

Conclusion

The landlord has been ordered to provide certain property or information to the tenant, as specified above, within 15 days of being served with this decision.

All other claims by the tenant are dismissed with, or without leave to re-apply, as set out above.

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: April 09, 2015

Residential Tenancy Branch

