



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on April 13, 2015.

Preliminary Matter:

The landlord objected to the presence of the agent for the tenant. She testified that he is a disgruntled ex-employee and troublemaker in the rental property. He attempted to sabotage all efforts the landlord is making within the building. The agent produced a document signed by the applicant authorizing him to act on the tenant's behalf. I determined the landlord does not have the authority to determine who can represent the tenant. I determine it was appropriate to proceed.

The tenant did not attend the hearing. The agent was asked whether he wanted to proceed in the absence of the tenant and warned of the challenges he might face without the tenant's testimony.. He stated that he wished to proceed. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for the return of the tenant's property?

Background and Evidence

The landlord's agent testified they inherited this tenancy from the previous owner and here is no written tenancy agreement on file. The agent for the tenant testified under oath that the tenancy began in 2005 and that the tenant has a written tenancy agreement which is in the belongings stored by the landlord. The tenant failed to pay the rent for February and March 2015. On March 20, 2015 the landlord obtained an Order for Possession. The tenant appeared at that hearing. The arbitrator recorded that the tenancy began in 2006 and that the tenant testified he had signed a written tenancy agreement but does not have a copy. The decision also records that the tenant acknowledged he had not paid any rent for February and March 2015.

The agent for the landlord testified he and the tenant had an agreement that the tenant would vacate on April 13, 2015. This would allow him the landlord access to the contractor to make repairs. On April 9, 2015 the agent for the tenant e-mailed the landlord informing the landlord that tenant would voluntarily leave the following week and that they as they had not obtained a Writ of Possession from the Supreme Court of British Columbia, the landlord had no authority to remove the tenant's belongings.

On April 13, 2015 the landlord moved the tenant's belongings to the basement.

The agent testified the landlord has denied the tenant access to the building and to his belongings. The agent for landlord denies this. He testified that on several occasions he has seen the tenant in the rental property visiting friends and he has asked the tenant to remove his belongings.

Analysis

With respect to each of the tenant's claims I find as follows:

- a. I find that the landlord acted illegally in removing the tenant's belongings without first obtaining a Writ of Possession from the Supreme Court. The landlord was aware of this requirement. The tenant has not produced evidence of quantifying a loss. In the circumstances I determined the tenant is entitled to nominal damages of \$100 as the landlord has violated the tenant's legal rights..
- b. The tenant claimed the sum of \$300 for the cost of 4 movers @ \$75 each. The agent testified the tenant paid friends to help him move and they were not able to do this because the landlord removed the belongings. The four individuals have signed a letter verifying this. While this is unusual I determined the tenant is entitled to \$300 for this claim.
- c. The tenant claimed \$3072 for loss of work for 4 weeks. He testified the tenant works for a contractor who removes asbestos. He has been unable to work because the landlord has denied him access to his belongings including his work clothes and equipment. I accept the testimony of the agent for the landlord when he stated he has asked the tenant to remove his belongings but he has refused to do so. The tenant has failed to prove this claim and failed to prove the landlord is responsible for any loss of work. This claim is dismissed.
- d. I dismissed the claim for the return of the damage deposit as the tenant has not yet provided the landlord with his forwarding address in writing as required by the Residential Tenancy Act.
- e. The agent for the tenant claimed for loss of future rent. There is no basis for this claim. I do not accept the submission of the agent for the tenant that that illegal actions of the landlord in removing the tenant's belongings have prevented the tenant from obtaining new accommodation.

Monetary Order and Cost of Filing fee

In summary I determined the tenant has established a monetary order against the landlord in the sum of \$400.

The tenant acknowledged that he owed rent for the months February and March 2015 totalling \$878 ($\$439 \times 2 = \878) in the hearing that was held on March 20, 2015. The agent for the tenant in the within hearing acknowledged the tenant owed those two months plus an addition 12 days of rent for April. .

Section 72(2) of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I ordered that the \$400 monetary order obtained by the tenant in this hearing be applied to the rent owed to the landlord for the months of February and March 2015 leaving a balance owing of \$478.

The agent for the tenant testified the landlord has denied the tenant access to his belongings. The agent for landlord testified he has told the tenant on several occasions to remove his belongings.

I order that the landlord return the tenant's belongings to the tenant upon the request of the tenant.

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: May 25, 2015

Residential Tenancy Branch

