



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, RPP

Introduction

This was the hearing of an application by the tenant. The hearing was conducted by conference call. The tenant and the named landlord called in and participated in the hearing. The landlord acknowledged that he was served with the tenant's application and supporting evidence. The landlord submitted his own documentary evidence in reply to the tenant's claim. The hearing on January 13, 2015 was adjourned and reconvened for hearing on April 8, 2015 for the reasons set out in the interim decision dated February 12, 2015. The hearing was further adjourned until June 2, 2015 to allow the parties to exchange additional evidence. The tenant and the landlord's representative attended the reconvened conference call hearing on June 2, 2015.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so in what amount?
Is the tenant entitled to an order directing the return of personal property?

Background and Evidence

The rental unit is a strata title apartment in Richmond. The tenancy began in September, 2013. The tenant said the agreement was for a one year term. He lived in the rental unit with his former girlfriend. The tenant said at the landlord's insistence he signed a second agreement with the landlord that was stated to be for the month of September, but he continued to occupy the unit and paid rent for October. The tenant testified that he does not have a copy of the tenancy agreement but he said that he was the only person named in the agreement as tenant, and he is the only person who signed the agreement as tenant.

The tenant testified that on October 8, 2014 he left the rental unit with his friend who was visiting him, to get some food. They left in the tenant's car and when exiting the

through the parking gates the tenant was apprehended by the police, arrested and held in custody until October 10th. The arrest was not related to the tenancy. On October 10th, after the tenant was released by the police, the tenant took a cab back to the rental unit. At the rental property, he discovered that his key fobs no longer worked to allow access to the rental unit. The tenant testified that he had no money and had to call friends to try to borrow money and find a place to sleep and food to eat. The tenant was unable to contact anyone and was forced to sleep outside the building. The tenant spoke to his landlord by telephone the following morning. His landlord said that he would not have any further contact with the tenant, although the tenant had paid the rent in full for the month of October. After repeated attempts the contact the landlord to get access to the rental unit, the landlord finally agreed to allow the tenant to access the rental unit in the presence of a police officer, but not to stay in the rental unit.

The tenant waited for the police to attend and then went to the rental unit. The tenant testified that his belongings were missing and had been stolen. In a written statement the tenant listed items that he said had been stolen as follows:

- My door mat
- 7 pairs of shoes
- All dishes including pots, pans, cups, knives, forks, plates, dishes and every thing else.
- Scent smellers
- 2 laptops (hp sony)
- Playstation 4 with 8 games (but left the cases for the games)
- Everything from my bathroom was gone
- All my nice clothing and clothing accessories were taken from my closet, including a \$2,000 suit
- All my identification was stolen including my temporary licence, old passports (expired), my mail and even my receipts for my previous months rent.

The tenant submitted a CD with photographs of the rental unit taken during his attendance with the police. He said that they showed some of his remaining belongings that later went missing.

The tenant stayed with a friend that evening. He returned to the rental unit the following day in the company of another police officer to get the rest of his belongings. The concierge gave them access to the floor and when the tenant arrived at the rental unit the door was open. The landlord was inside the unit, using some of the tenant's clothing as cleaning rags to clean the kitchen area. The tenant confronted the landlord

about his use of his clothing for cleaning. The tenant said the landlord demanded the return of keys; the tenant said he would not give back the keys until he got the rest of his belongings (those that were not already missing). The tenant said that the items still remaining in the unit were a two piece leather couch, two T.V's an L.G. and Sony, six speakers, a glass dining table with 5 chairs, a fish tank with live fish and a wooden stand, a barbeque, tables, bed, glass TV stand, plants, vacuum, carpet cleaner, tools and what remained of the tenant's clothes. The landlord refused to allow the tenant to remove any of his belongings. Later the landlord told the tenant that he would have the tenant's belongings moved to a storage facility and he would provide the tenant with the address. It took the tenant several days and a number of trips to and from the rental property before the tenant was able to find the location of the storage unit and get access to his belongings. The only items that were in the storage unit were two TVs, four speakers (not six), one box of clothing and a rice cooker. The tenant said that the landlord has refused to provide any other belongings; the tenant said that he heard from the police that the landlord stated that the rest of the tenant's stuff was taken to the dump.

The tenant requested the return of his belongings and a monetary award. According to his monetary worksheet the tenant claimed as follows:

• 7 pairs of shoes:	\$600.00
• 2 laptops, HP, Sony:	\$2,000.00
• Playstation 4 with 8 games and 3 controllers:	\$1,200.00
• Clothing with accessories, \$2,000 suit:	\$3,000.00
• Dishes:	\$500.00
• All bathroom accessories:	\$500.00
• Furniture (fish tank, leather couch, glass table BBQ, dining table	\$1,500.00
• 2 speakers:	\$200.00
• Last month's partial rent	\$1,188.00
• Security deposit:	\$750.00
• Pain and suffering:	\$1,500.00

Total:	\$12,938.00
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In reply to the tenant's application for dispute resolution, the landlord submitted a copy tenancy agreement that named the landlords and named the tenant and a woman, "S.S"

as tenants. The agreement was dated September 1, 2014 and purported to be for a one month term with rent in the amount of \$1,600.00 and it required the tenants to move out of the rental unit on September 30, 2014.

The tenant said that his tenancy started in 2013 and he lived in the rental unit with his former girlfriend, until she moved out in May, 2014. The landlord did not include a copy of an earlier tenancy agreement and did not refer to such an agreement in his written statement. The tenant said that he was unable to provide a copy of the agreement because all of his documents had been taken from the rental unit. The landlord submitted a form of Mutual Agreement to End a Tenancy. The document named the tenant and Ms. "S.S." as tenants. It was dated October 10th and signed by the landlord and by "S.S." but not by the tenant.

The landlord submitted a further typed document titled "Tenancy Release Form" it stated as follows:

Re: (address of rental unit)

Before the tenant ____ (name of "S.S.") ____ regain the access of the unit on October 10; 2014, the tenant agrees to carry the full responsibility to take all the belongings within the mentioned property. The tenant also agrees to inform her (ex) boyfriend (name of tenant), and (or) any other tenant where the future location of his (their) belongings will be. The tenant will also conduct the Move-Out Condition Inspection Procedure.

Expected location of (name of tenant)'s belonging: (address)

The following remark was noted in handwriting on the same document:

I, ("S.S."), would like to disable the two key fobs regarding the unit (address of rental unit) to prevent other possession of the fobs from regaining the access of the building and the unit.

Tenant (signature)

The landlord said that there was a tenancy with the tenant and with S.S. but for the month of September only. The landlord claimed that S.S. had been living in the rental unit since July, 2014, paid a portion of the rent and signed a tenancy agreement dated September 1, 2014. He said that S.S. told him that the tenant had been arrested and was in police custody. He testified that S.S. signed an agreement to end the tenancy on October 10th and moved belongings out of the rental unit. He said that S.S. participated

in a condition inspection on October 10th and agreed that the landlord could keep the security deposit on account of damage to the rental unit.

The tenant testified that S.S. had never been a tenant and that the tenancy agreement produced by the landlord was a fabrication. The said that he signed a tenancy agreement for a one month term on September 1, 2014 because the landlord insisted that he sign it. He said that S.S. was not a party and did not sign the agreement. The tenant testified that he paid rent for October and continued to stay in the rental unit until he was unlawfully evicted by the landlord.

The landlord submitted a written statement in response to the tenant's claim. The statement was dated December 22, 2014. In the statement the landlord said that:

The tenancy agreement with (name of tenant) & (S.S.) was a one month fixed term agreement. They both agreed to move out at the end of September 30th 2014. The order for possession notice was served at end of September. The tenant request that they need more time. No further contract was drafted and proof of service was received for month of October 2014.

On October 9th 2014, I received a call from the co-tenant, (S.S.) that she need to regain access of the rental unit since (name of tenant) had both key FOBS, and he was in custody. She agreed she would end the tenancy for both parties and move everything out of the unit. She also agreed to carry the full responsibility of all the belongings in the unit and where the future location of those belongings will be. With that agreement, I met with (S.S.) on the 10th of October helped her regain access to the unit. She had the entire afternoon moving. By the time I came back to do the final move out condition inspection, there were still a few big piece furniture and clothing left lying around the floor. She then took off with a van full of stuff leaving for Ontario. There were still furniture and items in the unit.

The landlord attached to the written statement a copy of a written tenancy agreement dated September 01, 2014 naming both landlords and the tenant and S.S. as tenants. He submitted a copy of a condition inspection report and the form of Mutual Agreement to End Tenancy dated October 10, 2014 signed by the landlord and by S.S. The landlord also submitted a copy of the "Tenancy Release Form" reproduced above.

The landlord's evidence as set out in his written statement is contradicted by the statements and documents in an earlier dispute resolution application that was filed by the landlord and then cancelled. On October 1, 2014 the landlord filed an application

for dispute resolution with respect to the rental unit. In the application the landlord named the tenant as the sole respondent. He said in the application that:

The tenancy agreement was a fixed term ending at the end of September 2014 with agreement of Tenant must vacate at the end of the term. The landlord is seeking for order of possession and recover the rent loss during the period of litigation. Claiming for October, November rent loss. (reproduced as written)

The landlord submitted a copy of a tenancy agreement as evidence in support of the cancelled application. The document was submitted by fax on October 1, 2014. The agreement named W.L.C. and R.C. as landlords and the tenant was named as the sole tenant. The agreement was for a one month term beginning September 1, 2014 and ending September 30th, 2014. It was signed by the landlord, R.C. and by the tenant alone. The agreement submitted by the landlord on December 22, 2014 as evidence in this proceeding, appears to have the same last page as the agreement submitted as evidence on the landlord's cancelled application, except that the signature of S.S. has been added. The first pages of the agreements are different; they are typed in different font sizes and the agreement submitted as evidence on the cancelled application named the tenant as the sole tenant, while the later document named both the tenant and S.S. as tenants. It is noteworthy that the second page of each document is identical. The second page of each document is in the standard form and contains the initials of the landlord and the tenant in the boxes provided to indicate that the tenancy will end and the tenant must move out at the end of the fixed term. The initials of S.S. do not appear in the version that the landlord claimed was signed by her.

On October 10, 2014, before the landlord cancelled his application for dispute resolution, he sent a fax to the Residential Tenancy Branch. The fax was filed as evidence on the canceled application. In the fax he said:

I, R.C., representative for W.L.C, received a call from the tenant's girlfriend, (name of S.S.) that her boyfriend is in custody from illegal possession substance. The police file # (number), and I did verify with the police regards the incident and their relationship. S.S. had stayed at that unit since beginning of the July 2014. She had provided me with proof of paying part of the rent. Now (name of tenant) is in custody, will I still be able to proceed with the Order of Possession & Monetary Order on (name of Tenant)? Please advice. (reproduced as written)

On May 13, 2015 the landlord submitted yet another form of tenancy agreement, this last document was a photocopy that named the tenant and S.S. as tenants; it was dated August 1, 2014 and was said to be for a one month term.

The tenant submitted some additional information concerning his claim for his missing belongings. He submitted a CD with images of advertisements for the items claimed to be missing. The advertisements were taken from various including listings on E-Bay and online classified advertisements. The tenant sought to increase the amounts claimed for certain items and provided a more detailed list of missing items. He also claimed for a refund of the 21 days rent of October, 2014 in the amount of \$1,113.00 and return of his security deposit of \$750.00. The tenant said that it was difficult for him to provide better proof of his lost and missing goods because the landlord disposed of all of his records and papers including any records of his purchases. The tenant said that the goods that he has listed are not exhaustive; he said that he has listed items that he is able to specifically recall and there are far more items actually missing.

The tenant claimed a further \$1,500.00 for pain and suffering. He said the landlord's eviction caused him to lose his employment; he had to endure sleeping outside and then had to stay in a motel and with friends and had to pay for rent.

Analysis

The landlord has submitted contradictory and inconsistent documentary evidence in different Residential Tenancy Branch proceedings. At the initial hearing of the tenant's application on January 13, 2015 the landlord did not disclose the fact that he made an earlier application for dispute resolution seeking to evict the tenant that was abandoned before the tenant had even been served. The landlord and the tenant were given the opportunity to respond to the additional documentary evidence at a reconvened hearing. It was only after the landlord was asked to respond to the additional evidence that on May 13, 2015, he submitted a third version of a tenancy agreement. The tenant denied any knowledge of the agreement, said to be made in August. After hearing the testimony of the parties and examining the documents I accept and prefer the evidence of the tenant to that of the landlord concerning the events that culminated in the tenant's eviction in October, 2014.

Some of the facts related to the tenancy are undisputed. It is common ground that the tenant occupied the rental unit with his former girlfriend J.T. and that J.T. was the sole tenant named in the tenancy agreement. The tenant continued to occupy the unit and pay rent to the landlord after J.T. moved out.

Based on the landlords own documents filed at the Residential Tenancy Branch on October 1, 2014, I find that the landlord entered into a fixed term tenancy agreement with the tenant on September 1, 2014 and although the agreement stated that the

tenant would move out on September 30, 2014, the landlord accepted rent from the tenant for the month of October.

There is no dispute that the tenant was arrested by police on October 8, 2014 and detained briefly before he was released. I find that during the brief period of his detention the landlord was contacted by S.S., who was involved in a relationship with the tenant. When the landlord was advised by S.S. that the tenant had been arrested and was in custody, I find that he then proceeded to deal with S. S., as though she was a co-tenant of the rental unit although she was not named in the tenancy agreement. I find that the agreement provided by the landlord in response to the tenant's application is a fabrication created by the landlord after the tenant was arrested on October 8, 2014. I do not accept purported agreement dated August 1, 2014 as authentic. It contradicts the landlord's earlier documentary evidence and appears to have been created to legitimize the landlord's actions in dealing with S.S. as tenant. The Landlord's October 1, 2014 communication to the Residential Tenancy Branch suggests that the landlord's first dealing with S.S. took place when she contacted the landlord seeking to gain access to the rental unit after the tenant was arrested. I reject the purported August agreement and find that it is a document concocted by the landlord and not an authentic agreement. The landlord may have acted upon representations made to him by S.S. in order to gain access to the rental unit and he apparently had S.S. sign a copy of the tenancy agreement along with supplementary documents that he created at the time, including a mutual agreement to end tenancy and the "Tenancy Release Form" reproduced above. The landlord may have been motivated to proceed as he did, based on representations from S.S. and out of concern that he would have difficulty evicting the tenant if he was incarcerated, but I find that he lacked legal authority to evict the tenant and that he proceeded as he did because it was expedient.

Based on the landlord's documents, I find that the tenant was the sole tenant of the rental unit and the sole signatory to the tenancy agreement signed September 1, 2014. I find that his tenancy continued in October and that the landlord accepted the tenant's rent payment for October. The landlord did not serve the tenant with a Notice to End Tenancy and he did not proceed with his application for dispute resolution against the tenant, which was abandoned. The landlord did not obtain an order for possession and he did not go to the Supreme Court to obtain a writ of possession or retain a bailiff before he acted to evict the tenant. I find that the tenant was illegally and wrongfully evicted from the rental unit and I find that the landlord's actions in dealing with S.S. as though she was authorized to end the tenancy were in breach of the provisions of the *Residential Tenancy Act* and that the landlord is therefore responsible for the tenant's loss and damage flowing from his wrongful eviction. The tenant has provided some evidence of the loss of belongings as a result of his eviction. The tenant's ability to

establish the extent of his losses has been made more difficult by the landlord's actions and the nature of his eviction. The landlord allowed S.S. unfettered access to the rental unit to remove any items she cared to and the landlord disposed of documents, records and papers belonging to the tenant that would have assisted him in establishing his claim. I find that the landlord is liable to compensate the tenant's for his lost and missing goods. I find that the landlord was not entitled to consider that the tenant abandoned his personal property because the requirements of section 24 of the Residential Tenancy Regulation were not satisfied. The landlord also failed to create a written inventory of the tenant's property and failed to provide particulars of its disposition, as required by the Regulation.

The tenant provided photographs of the rental unit and some contents that still remained when he was allowed to enter for a brief period. I accept as accurate the tenant's initial statement concerning his personal property that was lost, missing or disposed of by the landlord. I have considered his evidence as to values for the items and find them to be reasonable.

I award the tenant the sum of \$9,500.00, being the claimed values for the itemized goods listed in the evidence portion of these reasons. I do not award the increased values claimed in later submissions by the tenant and I note that the tenant did not amend his claim to increase the amount claimed; I therefore limit it to the amount claimed in his application. The landlord said at the hearing that any items of property not returned to the tenant have been disposed of. There is therefore no basis for an order directing the landlord to return the tenant's personal property.

The tenant was wrongfully evicted and was deprived of the use of the rental unit for the balance of the month of October, although rent was paid. The rent was \$1,600.00 and he is entitled to recover rent for period after his eviction in the amount of \$1,188.00. In the tenancy agreement signed by the tenant on September 1, 2014, the security deposit is noted to be "carry over" and I take that to establish that the tenant has been credited with payment of a deposit amount. The tenant said that he paid a deposit of \$750.00 and I find that he is entitled to recover that amount.

The tenant claimed payment of the sum of \$1,500.00 for pain and suffering. I find that the tenant is entitled to an award of damages for pain and suffering that resulted from the landlord's unlawful eviction that left the tenant homeless to sleep outside when he was prevented from returning to the rental unit and thereafter dependent upon friends to provide him with a place to sleep. He has been put to hardship and difficulty as a result of the loss of his personal property. I find that the sum of \$1,500.00 is a reasonable and appropriate amount of compensation in all the circumstances.

Conclusion

The total award to the tenant is the sum of \$12,938.00. The tenant did not pay a filing fee and I make no award on that account. I grant the tenant monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: July 7, 2015

Residential Tenancy Branch

