Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that on March 26, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application for Dispute Resolution were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 20, 2015 and August 25, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were not served to the Tenant as he did not know her address.

The Tenant stated that she provided a service address on the Application for Dispute Resolution, which is the address of her advocate. The Landlord stated that he went to the service address provided; determined that it was a government office; and that he did not think he could deliver evidence to that address.

As the Landlord's evidence package was not served to the Tenant, it was not accepted as evidence for these proceedings. As the Landlord has a service address for the Tenant he had every opportunity to serve his evidence to that address in accordance with section 88(d) of the *Residential Tenancy Act (Act).* The Landlord was given the opportunity to discuss these documents during the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

At the hearing the Landlord stated that he submitted two pages of documentation from his cable provider with the documents he submitted to the Residential Tenancy Branch on August 20, 2015. He stated that these documents show that his cable service was not interrupted during the latter part of this tenancy.

As I find that these documents may be very helpful in determining whether the cable service was terminated during this tenancy, I directed the Landlord to serve these two documents to the Tenant by the end of the day on August 31, 2015. The Landlord stated that he is able to deliver these documents to the service address prior to the end of the day.

The Tenant was advised that she has until September 11, 2015 to submit evidence in response to these two pages to the Residential Tenancy Branch and/or to advise the Residential Tenancy Branch that she did not receive these two pages.

On September 05, 2015 the Tenant submitted three pages of evidence, in which she acknowledges receiving documents from the Landlord's cable provider and in which she notes that there was a "change in service" on October 11, 2014.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to compensation for being without hot water and/or cable/internet?
Is the Tenant entitled to compensation for being locked out of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on February 01, 2013;
- the Landlord did not create a written tenancy agreement;
- a security deposit of $440.00 was paid;
- this tenancy was the subject of a dispute resolution hearing on September 22, 2014, which was convened in response to an Application for Dispute Resolution filed by the Tenant;
- the hearing on September 22, 2014 was convened, in part, to consider the Tenant's application for the refund of her security deposit;
- at the hearing on September 22, 2014 the Landlord and the Tenant agreed that this tenancy would end, by mutual consent, on October 15, 2014;

- at the hearing on September 22, 2014 the parties entered into a settlement agreement in which the Landlord agreed to pay $440.00 to the Tenant;
- the Tenant provided a forwarding address, in writing, by posting it on the door of the Landlord's business office on October 12, 2014 or October 13, 2014;
- the Tenant also left the keys and the garage door opener at the Landlord's business office on October 12, 2014 or October 13, 2014;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that:

- shortly after this tenancy began he returned $400.00 of the security deposit to the Tenant because she needed it for groceries;
- he agreed to refund the $440.00 security deposit during the hearing on September 22, 2014 simply because he wanted the Tenant to move;
- he did not subsequently pay the $440.00 to the Tenant because she paid not rent for October of 2014, which was not a part of the settlement agreement the parties entered into on September 22, 2014.

The Tenant stated that:

- the Landlord did not return any portion of the security deposit during, or after, the tenancy;
- the Landlord did loan her some money during the tenancy but it has been repaid;
- during the teleconference on September 22, 2014 the Landlord agreed that she did not have to pay rent for October of 2014; and
- the settlement agreement of September 22, 2014 does not indicate that she was not required to pay rent for October of 2014 because the Arbitrator neglected to include that term in the recorded settlement agreement.

The Tenant submitted a copy of the decision from the hearing on September 22, 2014.

The Tenant is now seeking double the return of the security deposit, as the Landlord has not complied with the settlement agreement made at the hearing on September 22, 2014, during which the Landlord agreed to return the security deposit of $440.00.

The Tenant is seeking compensation for aggravated damages, in the amount of $300.00, for being locked out of the rental unit.

The Landlord stated that:

- he inspected the rental unit sometime prior to receiving the keys and garage door opener from the Tenant;
- during the inspection he determined that most of the Tenant's personal property had been removed from the rental unit, some of which had been moved into the garage;

- on the date of the inspection he moved any personal property remaining in the unit into the garage;
- there were 6-8 boxes of personal property and some loose items belonging to the Tenant on October 12, 2014;
- he changed the locks to the rental unit on October 12, 2014;
- on October 12, 2014 he left a note on the Tenant's car informing her the lock to the rental unit had been changed;
- he changed the locks, in part, because he determined that most of the Tenant's personal property had been removed by October 12, 2014;
- he changed the locks, in part, because when he inspected the rental unit he determined that the Tenant was wasting electricity by setting the thermostat exceedingly high;
- he changed the locks, in part, because when he inspected the rental unit he determined that the Tenant had caused minor damage to the rental unit and he was concerned she would cause additional damage; and
- he still has some personal property belonging to the Tenant, which he is willing/able to return to her.

The Tenant stated that:

- on October 11, 2014 the Landlord came to her new home and informed her that the lock to the rental unit had been changed;
- on October 12, 2014 she went to the rental unit and confirmed the lock to the unit had been changed;
- she removed some of her personal property from the garage on October 12, 2014;
- she left approximately 25 boxes of personal property in the garage;
- she did not move all of her personal property on October 12, 2014 as she did not have sufficient room in her vehicle; and
- she returned the keys and the garage door opener to the Landlord on October 12, 2014, because she did not feel safe returning to the rental unit to recover the remainder of her property from the rental unit.

The Tenant is seeking compensation for being without hot water for the several days during the latter part of the tenancy. The Tenant contends that on September 26, 2014 she noticed she had no hot water and she immediately reported the problem to a male who works in the Landlord's business office. She stated that an electrician came to the rental unit approximately five days after it was reported; she believes he made some sort of repair at that time; and that she had hot water thereafter.

The Tenant submitted a letter from the female Witness for the Landlord, dated September 26, 2014, in which the female Witness declared that the hot water in the rental unit had been shut off.

The female Witness for the Landlord stated that when she went to the rental unit on, about, September 26, 2014 the Tenant ran the water to show that she did not have any

hot water. She stated that the following day the Tenant told her that she had accidentally turned on the wrong faucet and that there was hot water in the rental unit.

The Tenant denies telling the female Witness for the Landlord that she had accidentally turned on the wrong faucet.

The male Witness for the Landlord stated that:

- on, or about, October 01, 2014 the Tenant reported a problem with her hot water;
- he immediately reported the problem to the Landlord;
- within ½ hour of receiving the report he went to the rental unit with an electrician who had been contacted by the Landlord;
- he observed the electrician test the water and determine that hot water was available; and
- the electrician made no repairs during this visit.

The Tenant is seeking compensation for being without cable and internet for several days during the latter part of the tenancy.

The Tenant stated that on September 26, 2014 the Landlord unplugged the internet cable, which ran under the door from a portion of the building used by the Landlord to her rental unit and that he terminated her television service. The Landlord denies the allegation.

The Tenant submitted a letter from the female Witness for the Landlord, dated September 26, 2014, in which the female Witness declared that the cable and internet had been cut off.

The female Witness for the Landlord stated that she typed the letter dated September 26, 2014 on her own computer but she does not now recall how she determined that the cable and internet service in the rental unit had been terminated. She stated she does not recall testing those services and it is possible that she wrote the letter on the basis of information provided to her by the Tenant. She stated that she knows the Tenant was watching television in the rental unit after September 26, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a settlement agreement at a previous dispute hearing held on September 22, 2014, in which the Landlord agreed to pay $440.00 to the Tenant and that this payment has not yet been made.

I find that both parties are obligated to comply with the terms of the settlement agreement they entered into on September 22, 2014.

I find that the payment of $440.00 was a refund of the security deposit. This is based

on the settlement agreement submitted in evidence, in which the Arbitrator recording the settlement agreement recorded that $440.00 payment represented “the Tenant’s full security deposit and the filing fee for this application”.

As the Landlord has not complied with his agreement to pay $440.00 to the Tenant and a monetary Order was not awarded by the Arbitrator who recorded the settlement agreement, I grant the Tenant a monetary Order for $440.00.

In determining that the Tenant is entitled to a monetary Order for $440.00 I have placed no weight on the Landlord’s submission that rent is due for October of 2014. I find that submission is not relevant to the issues proceedings, as a claim for unpaid rent is not an issue in dispute at these proceedings.

As the Tenant accepted the payment of $440.00 as full settlement of her claim for a refund of the security deposit during the hearing on September 22, 2014, I find that the Tenant has abandoned her right to seek further compensation in regards to the security deposit. Apart from seeking a means to enforce the settlement agreement entered into on September 22, 2014, I find that the Tenant does not have the right to file another claim in regards to the security deposit. I therefore decline to consider the Tenant’s application to recover double the security deposit pursuant to section 38(6) of the *Act.*

As the Landlord agreed to return the security deposit of $440.00 during the hearing on September 22, 2014, I find that the Landlord has abandoned his right to retain the security deposit. I therefore have placed no weight on his submission that he returned $400.00 of the deposit to the Tenant shortly after the tenancy began.

On the basis of the undisputed evidence that the parties mutually agreed to end the tenancy, effective October 15, 2014, I find that the Tenant had the legal right to occupy the rental unit until that date.

Section 31 of the *Act* stipulates, in part, that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

I find that the Landlord breached section 31 of the *Act* on October 12, 2014 when he changed the lock to the rental unit, which prevented the Tenant from accessing the rental unit.

There is nothing in the *Act* that allows a landlord to change the locks to a rental unit if a tenant is using an excessive amount of electricity or a tenant is damaging the rental unit. Therefore even if I accepted the Landlord’s testimony that the Tenant was wasting electricity or the Tenant had caused minor damage to the rental unit, I would not conclude that the Landlord had the right to change the locks.

Section 26(3) of the *Act* stipulates that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property.

Section 26(4) of the *Act* stipulates that section 26(3) of the *Act* does not apply if the landlord has a court order authorizing the action, or the tenant has abandoned the rental unit and the landlord complies with the regulations.

I find that the Landlord breached section 26 of the *Act* on October 12, 2014 when he changed the lock to the rental unit. Although he did move at least some of her property to the garage, his actions interfered with her ability to pack and move her personal belongings. Given that on September 22, 2014 the parties had mutually agreed to end the tenancy, effective October 15, 2014; the Tenant had not returned the keys to the rental unit; and the Tenant still had personal property in the rental unit on October 12, 2014 I find that it was not reasonable to conclude that the rental unit had been abandoned.

Residential Tenancy Branch Policy Guideline #16 reads, in part:

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.
- They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.

I concur with Residential Tenancy Branch Policy Guideline #16 and I find that the Tenant is entitled to compensation for aggravated damages, in the amount of $300.00.

In adjudicating this claim I was heavily influenced by my belief that the Landlord knew, or should have known, that he did not have the right to take possession of the rental unit until the end of the tenancy, which was October 15, 2014. I find being locked out of a rental unit before you have had the opportunity to remove all personal belongings would distress most reasonable people. In these circumstances, I find the Landlord's actions resulted in significant inconvenience as the Tenant had to move some of her personal belongings prior to October 15, 2014 and she opted to abandon some of her personal belongings in an effort to avoid interacting with the Landlord.

There is a general legal principle that places the burden of proving an allegation on the person who is claiming compensation. In these circumstances the burden of proving that the Landlord shut off the hot water rests with the Tenant and I find that she has submitted insufficient evidence to show that the Landlord shut off the hot water during the latter part of the tenancy. I therefore dismiss the Tenant's claim for compensation for being without hot water.

In adjudicating the claim for hot water I have considered the letter written by the female Witness for the Landlord, dated September 26, 2014. In the absence of evidence to the contrary, I find that when the female Witness for the Landlord wrote this letter she believed there was no hot water in the rental unit on, on about September 26, 2014.

In adjudicating the claim for hot water I have also considered the testimony of the female Witness for the Landlord, who stated that after writing the aforementioned letter that Tenant told her that she had accidentally turned on the wrong faucet and that there was hot water in the rental unit. I find that this testimony negates the probative value of her letter, dated September 26, 2014. Although the Tenant denies telling the female Witness for the Landlord that she had accidentally turned on the wrong faucet, I find there is no evidence to corroborate that statement. I therefore find that the evidence provided by the female Witness for the Landlord does not help to establish there was no water in the unit at the end of the tenancy.

In adjudicating the claim for hot water I have also considered the testimony of the male Witness for the Landlord, who stated that he went to the rental unit shortly after receiving a report that the hot water was not working and he was present shortly thereafter when the electrician determined there was hot water in the unit. Although I recognize that this witness may be biased, his evidence serves to refute the Tenant's claim that there was no hot water.

I find that the Tenant has submitted insufficient evidence to show that the Landlord shut off the cable and internet during the latter part of the tenancy. I therefore dismiss the Tenant's claim for compensation for being without these services.

In adjudicating the claim for cable/internet services I have considered the letter written by the female Witness for the Landlord, dated September 26, 2014. Although this witness acknowledges writing the letter I find, on the basis of her testimony at the hearing, that she does not recall how she arrived at the conclusion that the internet and cable in the rental unit was not working. I therefore find that the letter has limited probative value.

In adjudicating the claim for cable/internet services I have also considered the testimony of the female Witness for the Landlord, who stated that the Tenant was watching television in the rental unit after September 26, 2014. I find that this testimony serves to refute the Tenant's claim that there was no cable service.

In adjudicating the claim for cable/internet services I have considered the documents from the Landlord's cable provider. Although these documents indicate there was a "change in service" on October 11, 2014 and October 26, 2014, there is no indication that there was a "change in service" on September 26, 2014, which is when the Tenant contends the cable service was terminated. I find these documents do not support the Tenant's claim that cable service was terminated in September of 2014.

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

Conclusion

The Tenant has established a monetary claim of $790.00, which is comprised of $440.00 for the amount agreed to in a previous settlement agreement, which has not yet been paid; $300.00 in aggravated damages; and $50.00 for the cost of filing this Application for Dispute Resolution.

I therefore grant the Tenant a monetary Order for $790.00. In the event the Landlord fails to voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: September 14, 2015

Residential Tenancy Branch