



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, CNR, MNDC, MT

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for an Order of Possession for landlord's use pursuant to section 55; and a monetary order for unpaid rent, damage or loss pursuant to section 67.

The tenants applied for more time to make an application to dispute a notice to end tenancy pursuant to section 66; cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the Notice") pursuant to section 47; and a monetary order for damage or loss as a result of this tenancy pursuant to section 67.

Both parties attended the hearing, one landlord and two tenants. All parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing; the landlord acknowledged receipt of the tenant's Application for Dispute Resolution package and the tenant acknowledged receipt of the landlord's Application for Dispute Resolution including amendment.

Preliminary Issue: Portion of each application withdrawn

The tenants originally applied for more time to make their application. However, on attending this hearing, the tenants advised that they had vacated the rental unit. The landlord withdrew the application for an Order of Possession and the tenants withdrew their application for more time and to cancel the Notice to End Tenancy. *I note that the tenants had made an error in the type of notice they referenced in their application. However, as their application to cancel the notice is withdrawn, this is a moot point.*

The landlord and tenant both sought to proceed with the monetary portions of their applications.

Remaining Issues to be Decided

Are the landlords entitled to a monetary award for damage or loss?

Are the tenants entitled to a monetary award for damage or loss?

Background and Evidence

At the outset of this hearing, I was advised that the tenants no longer reside in the rental unit. The landlord testified that, after making her application for an Order of Possession but prior to the scheduled hearing, she testified that she “forcibly evicted the tenants” from the rental unit. She testified that, on October 17, 2015 she waited for the tenants to go out with their children for the day and, while they were gone, she and approximately 10 of the landlord’s friends entered the rental unit, packed up all of the tenant’s belongings and drove them to a storage unit. After that and before the tenants returned for the day, the landlord testified that she had the locks changed on the rental unit.

The landlord testified that the tenants returned to their home with their two children (1 and 9 years old). The landlord testified that, on the tenants’ arrival to the residential premises, they attempted to enter their rental unit and were stopped from doing so by the landlord’s daughter and other people on site. She testified that Tenant SM was physically restrained while the police were called.

Tenant MP testified that she, her husband and her child arrived home to find several people in the yard of the residential premises. She testified that, when her husband attempted to enter the rental unit, he was not permitted to do so and physically restrained. She testified that their locks had been changed and that all their belongings had been removed from the premises. Tenant MP testified that she wanted to get into the house to get a toy and a drink for her one year old child. Tenant MP testified that she was not permitted to enter and ultimately, according to her testimony she was pushed and had her hair pulled out by the landlord’s daughter while trying to enter home. She testified that, in the process of a scuffle, the child’s new toy from a recent first birthday was destroyed and that both children were upset by the yelling and pushing at the scene. She testified that her 9 year old child witnessed the entire incident and is still upset by it, as is she.

Tenant SM also testified to returning home to find several people in his yard. He testified that, when he attempted to enter his home, he was interfered with and restrained by the landlord’s family. He also alleges he was hit with a shovel.

Tenant SM testified that he had a number of precious and sentimental items in his possession. He testified, providing a very detailed list and photographic evidence to show that many of his belongings were discovered missing, damaged or destroyed as a result of the landlord's rushed packing of his belongings. He testified, with a large array of photographs to support his testimony that many items were damaged during the eviction and packing by the landlord including;

- approximately 20 collectible sports figures ranging from \$20.00 - \$75.00 per item;
- 2 collectible sports photos valued at approximately \$150.00 - \$500.00 each;
- over 25 collectible autographed sports cards valued at \$20.00 each;
- damaged televisions; and
- many other both collectible and personal items.

With respect to the many items listed as missing or damaged by the tenant, they are shown in the tenant's photographic evidence broken and packed without any protection, mainly placed together in large black garbage bags. The tenant's photographic evidence also reflected his testimony that several items belonging to Tenant SM's son (living part time at the residence) were damaged during the packing including; a *playstation*; several *xbox* children's games; *blu-ray* movies; a *blu-ray* movie player; and a cell phone.

Tenant SM also claimed that he had established a savings routine and piggy bank system for his children. He described the savings system in detail as did his wife. He described that each child had a colour coded piggy bank and that he had recorded the amounts that had been placed in each bank in savings for his children. He provided his reconciliation documents: records of his deposits into each piggy bank. It was both colour coded and detailed with dates of deposits. Tenant SM testified that the nature of his work (taxi driver) is that he receives cash payments, tips and that he uses this system for savings acquired from tips at his work. Tenant SM provided sworn testimony that all the money (\$1327.00) was taken from those jars he had for his children. He testified that one penny was left where those jars had been.

While the tenant provided a detailed and extensive list of items lost or damaged as a result of the eviction, it is impossible to consider every item in this list individually. The tenants claim that their loss is almost indefinable. I have summarized the general nature of the tenants' monetary request here;

Some Items identified in Tenant Application	Approximate amounts sought by tenant in claim
20 collectible figures	20.00 - 75.00 per item
2 collectible sport photos	150.00 – 500.00 per item
25 collectible sports cards	20.00 per item
Young tenant's items including; <i>Playstation; Xbox games; Blu-ray movies; Blu-ray player; and I-phone</i>	totalling over \$3000.00
Smaller items including recently purchased packing boxes and household items like water bottles for the family	totalling over \$1500.00
Television set	\$1400.00
Piggy bank system	\$1327.00
Irreplaceable items and aggravated damages	\$5000.00
Total Monetary Order Sought by the Tenants	\$14,576.00

Both tenants testified, with emotion, that irreplaceable items were damaged during the “packing” of their home at the hands of the landlord and her helpers. They testified that items that cannot be replaced included a hand print in clay of their child at birth and their older child’s baby bassinet. The tenants explained that their monetary claim and request, while documented and broken down by the amounts of particular items, is at essence a claim for aggravated damages. The tenants acknowledge that they are unable to quantify their loss or provide documented proof of the value of all of their possessions. Tenant SM submitted that the nature of the action taken by the landlord in removing the tenants and their belongings from their home by “force” (as described by the landlord) should result in an award reflecting the impact of that action/eviction.

The landlord in attendance at the hearing (“Landlord SO”) testified that she sought to recover the cost of the “eviction” including the cost to store and insure the tenant’s belongings at the storage site they were taken to. She also sought to recover the cost of transport of the tenant’s belongings as well as dump fees for the tenant’s items that she chose to dispose of. The landlord claimed that the unit was very dirty and damaged. She testified that the carpets and all other flooring had to be either painted or replaced. She testified that she was required to buy several pairs of gloves and facemasks for the people whom she allowed to enter the tenant’s rental unit. She also wished to recover the cost of changing the locks to the rental unit. She changed the locks prior to the tenant’s return the same day she packed and removed their belongings. Landlord SO stated that her husband is a contractor and the costs she sought for repairs to the unit

were very reasonable. She provided some receipts and indicated in her testimony that “other receipts can be provided if needed”. She also testified that she estimated the cost of labour for the people who assisted her in the eviction.

The landlord called a witnesses (“**Witness K**”) who was present on the day of the eviction by the landlord. He testified that the landlord had contacted him in advance and asked to assist in packing all the tenant’s belongings. He testified that while he did not take part in packing the belongings, he was present. He testified that, while he did not go inside at all, it appeared to him that the rental unit was very dirty. He testified that the people who went inside wore masks and, from outside, he could see animal feces on the ground of the rental unit. He testified that while he did not go inside the rental unit at all, he believed that all of the people packing belongings were “respectful” and that even though the packing was very rushed, he believed that everyone was careful with the tenant’s belongings. The witness testified that, while he was not present and did not witness all of the dismantling of the tenants’ furniture, he was fairly certain that items were handled with care.

On being questioned by the tenant, the landlord’s witness conceded that he did not witness all of the packing. He also acknowledged that boxes, on being questioned that some items were left outside while the packing and loading was underway. The witness further conceded, on questioning that it was possible that items could have gone missing or been taken. He also testified candidly, on questioning, that the packing was done in a rush and it was not inconceivable that items could have been broken.

The witness testified that he returned to the residential premises later on at the request of Landlord SO when the tenants arrived home the day of the “eviction”. He was told by phone by the landlord that the tenants were very upset and that the situation was escalating.

Analysis

I address both the application by the landlords and the tenants with respect to this tenancy by providing several relevant sections of the *Act*. The consideration of the requirements under each of these sections will lead to a determination of the outcome of both of these applications.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I find that the evidence of both parties clearly shows that the landlords contravened section 29 of the *Act* by entering the rental unit without providing notice or seeking permission. This was not done in error or in ignorance but simply because the landlord did not wish to wait for the formal dispute resolution process to be completed.

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

I find that the evidence of both parties clearly shows that the landlord contravened section 30 of the *Act* by unreasonably restricting the tenants' access to their home in a definitive and permanent way by "evicting" the tenants.

Prohibitions on changes to locks and other access

31 (1) 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.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

I find that the landlords contravened section 31 of the *Act* by changing the locks on this residential property without the agreement of the tenant. The landlord did not seek permission from the Residential Tenancy Branch in the form of an application to change the locks nor did the landlord seek permission, or even provide any notice, to the tenants with respect to the change of the locks or any other aspect of this "eviction".

The *Act* provides several different grounds with which a landlord may apply to end a tenancy including;

- section 46 [*landlord's notice: non-payment of rent*];
- section 47 [*landlord's notice: cause*];
- section 48 [*landlord's notice: end of employment*]; section 49 [*landlord's notice: landlord's use of property*];
- section 49.1 [*landlord's notice: tenant ceases to qualify*]; and
- section 50 [*tenant may end tenancy early*].

While the landlord made an application for dispute resolution for an Order of Possession and an end to this tenancy pursuant to the *Act*, she chose to take matters into her own hands to gain possession of the tenants' rental unit thereby contravening the *Act* in the ways noted above.

If the landlord required an early end to tenancy, she was at liberty to make an application pursuant to section 56 of the *Act*. The landlord did not apply for an emergency end to this tenancy.

Under the *Residential Tenancy Act*, a landlord must comply with the provisions therein by ensuring that they provide notice to end tenancy in the correct format to a tenant as well as abiding by timelines for disputing any notice given. There are several provisions within the *Act* that provide consequences for failure to comply with the *Act*.

The Introductory Provisions of the Residential Tenancy Act include that;

This *Act* cannot be avoided

And

Liability for not complying with this *Act* or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord has sought to a monetary claim mainly for costs related to the eviction of the tenants. Given that the landlord contravened multiple sections of the *Act* and choosing to evict the tenants in the manner she did, I do not find that the landlord is entitled to any monetary award or compensation.

The tenants have applied for \$14, 576.00 in damage to their belongings and compensation for the nature of their eviction from the premises. Both tenants provided testimony with respect to the damage to their possessions. Both tenants provided a version of events that is not contradicted by the testimony of the landlord or the landlord's witness. The landlord did not dispute the circumstances of this eviction, only that she caused any damage to the tenant's belongings. She claims that great care was taken to pack the tenants' belongings in the short time frame before they returned home. She testified that many items were already broken and the tenants are inflating their claim.

Given the conflicting testimony with respect to the treatment of the tenants' belongings, this case hinges partially on a determination of credibility. In addition to the manner and tone (demeanour) of the landlords' evidence, I have considered the content, and whether it is consistent with the other events that took place at the end of this tenancy. I do not find that the evidence presented by the landlord regarding the treatment of the tenants' belongings was credible. It does not seem reasonable that someone would there would be no damage to the tenants' belongings as a result of the landlord entering the rental unit without permission and packing the belongings in a hasty manner and without detection. I do not find that the landlords desire to act quickly and without the permission of the tenants allowed for her to exercise "great care" in packing the tenants' possessions. Moreover, I find that the candid nature of the landlord's witnesses' responses to the tenant's inquiries belied the fact that the packing was done with urgency.

Despite the emotional testimony of the tenants, I found both tenants to be credible in their testimony. I found that they did not attempt to exaggerate their circumstances or their claim. I found that they testified with candor, even describing some of their own behavior as less than acceptable on the day of the eviction. Neither tenant wavered in their version of the events of October 17, 2015 as well as the details with respect to their lost and damaged possessions. I find that the level of detail provided by the tenants in testimony and in documentary evidence supported their claim and bolstered their credibility. The tenants also provided photographic evidence to reflect and support their testimony. Each tenants' testimony supported the others' in a reasonable, consistent and plausible manner.

In the circumstances before me, I find the version of events provided by the tenants to be highly probable given the conditions that existed at the time of the eviction. The conditions were such that there was urgency to the landlord's actions. Considered in its

totality, I find the evidence presented by the tenants more credible than the testimony of the landlord, particularly with respect to the care of the tenants' belongings.

By the very nature and way in which the landlord chose to evict the tenants, I find the tenants were put in a position where they are unable to fully quantify the extent of damage to their belongings and any other costs that they were forced to incur as a result of this eviction. I take this fact into consideration in determining any monetary award to the tenants in this matter. The tenants testified that, while they spent one night in a hotel, they mitigated any further losses by finding friends and family to live with while they located a new home. They testified that they continue to hope that some of their items will materialize and be returned by the landlord but they are afraid that many items are lost just as many were damaged. The landlord indicated no items belonging to the tenants are still at the residential premises or in her possession.

Policy Guideline No. 16 in conjunction with the *Residential Tenancy Act* provides that,

The Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the Act. Damages is money awarded to a party who has suffered a loss which the law recognizes.

Under the *Act*, I can issue an award for out of pocket expenditures if those expenditures are proved at the hearing. I may also issue an award "for the value of a general loss where it is not possible to place an actual value on the loss or injury". According to Policy Guideline No. 16,

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 ... 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.

In the circumstances of this "eviction", I find that the tenant is entitled to a monetary award that reflects general damages as I find that it is not possible to place an actual value on the tenants' loss as a direct result of the landlord's actions.

In considering awarding damages to one party, I must be satisfied that the actions of the wrongdoer were either negligent or deliberate. I find that the actions of the landlord were both wrong and deliberate. In fact, the landlord does not dispute that her actions were deliberate. The fact that the landlord's actions were wrong is evident in review of her obligations as described by the *Residential Tenancy Act*.

I must also be satisfied that the damage that resulted from the actions of the wrongdoer could have been reasonably foreseen. The landlord removed all of the tenants' possessions from their home, including those of their children. The landlord arranged for a variety of strangers to the tenants to attend to their home while they were not there and dismantle their furniture. The landlord arranged for all of the tenants' furniture and possessions to be moved to another secure location. The landlord changed the locks of the tenants' home while they were out for the day with no notice to those tenants. The tenants were physically restricted from re-entering their home in the presence of their young children. I find that any one of these actions could have foreseen damage to the tenants' property in the rush to relocate it as well as impact on the tenants and their children as a result of being locked out of their home. I find that any reasonable person would foresee a variety of negative consequences (including distress and cost to the tenants and their family) for taking such action in contravention of both common sense and the requirements of the *Residential Tenancy Act*.

I must be satisfied that there was significant impact on the wronged person's life to award aggravated damages. I find that this incident, described by both tenants had significant impact on their lives. Some of the irreplaceable items that I take into consideration in making the monetary award to the tenants include;

- The cast of their son's hand when born;
- Baby bassinette;
- Favourite movies of Tenant SM's son;
- Photographs and collectibles not able to be quantified but documented in writing and photographic evidence;
- Personal belongings.

I find in the circumstances that the tenants are entitled to a nominal amount reflecting the items lost or damaged as a result of the landlord's actions in evicting the tenants, removing all of their personal possessions and furniture from their home, acting with force in denying them access to their home on their return from a day out and for their expenditures in relation to relocating. I find that the tenants provided sufficient proof to support their request for a monetary order in the amount of the savings money in piggy

banks as carefully documented by Tenant SM. I find the tenants are also entitled to an amount in aggravated damages for those actions related to the eviction.

Item	Amount Awarded
Items lost or damaged	\$3500.00
Piggy bank system	\$1327.00
Aggravated damages	\$5000.00
Total Monetary Order to Tenants	\$9827.00

Conclusion

I issue a monetary Order in the amount of \$9827.00 in favour of the tenants.

The tenants are provided with formal Orders in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: December 31, 2015

Residential Tenancy Branch

