



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPT, AAT, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order of possession; an order to allow access to the rental unit; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing the tenant confirmed that he had not submitted any evidence to the Residential Tenancy Branch (RTB) or served any evidence to the landlord.

The landlord's agent testified the landlord had served evidence to both the tenant and the RTB. However, I noted that there was no documentary evidence in the file and the tenant stated he had not received any evidence from the landlord.

The parties acknowledged the landlord had filed an Application for Dispute Resolution against the tenant which is scheduled to be heard later this year. The landlord's agent suggested that the evidence for both files may have been submitted and served at the same time and may have gone as 1 package.

As such, I ordered that I had no documentary evidence from either party but that the parties could provide any testimony they considered relevant to their positions. I also advised the landlord's agent she could speak about any of the documentary evidence the landlord had submitted with the other file.

Prior to ending the hearing I advised the parties I was reserving my determination on the tenant's monetary claim until my written decision. However, in regard to the tenant's claim for an order of possession I verbally ordered that the tenant was entitled to immediate possession of the rental unit. I also ordered that the landlord was to immediately reinstate unfettered and unaccompanied access to the rental unit.

I also advised both parties that if rent remained unpaid for any months of the tenancy the landlord could issue a 10 Day Notice to End Tenancy for Unpaid Rent. I also noted that if the landlord issued such a notice the tenant would be responsible for either

paying the rent within the 5 days allowed after receiving the Notice or filing an Application for Dispute Resolution seeking to cancel the Notice. I also ordered that the landlord could not end the tenancy until such time as he obtained an order of possession in accordance with the *Residential Tenancy Act (Act)*.

I note that the matter of whether or not the tenant owed any amounts of rent for the months of February and March 2016 were not before me in this hearing. As such, I make no findings of fact or law related to the issue of the payment of rent for these two months.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order of possession to an order to have the landlord allow the tenant access to the rental unit; to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 30, 44, 54, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the current tenancy began in July 2015 on a month to month basis for a monthly rent of \$450.00 plus ½ of the utilities due on the 1st of each month. No security deposit was paid.

The tenant seeks an order of possession and an order allowing him and his guests' access to the rental unit. The tenant submitted that on February 1, 2016 the landlord gave him a written notice to move out of the rental unit by the end of February 2016 and that the landlord changed the locks on February 16, 2016 and he was no longer provided access to the rental unit.

The landlord's agent confirmed the landlord gave the tenant a letter on February 1, 2016 stating that the tenant needed to pay the rent or he would have to move by the end of the month. The agent stated further the landlord then left town for a couple of weeks and when he returned the tenant had still not paid any rent so he decommissioned the locks on February 16, 2016. The landlord's agent confirmed that the landlord had not issued a 10 Day Notice to End Tenancy for Unpaid Rent nor obtained an order of possession from the RTB.

The landlord's agent stated the tenant has access to the rental unit; that the locks were not changed but that the landlord would not allow access to the unit unless the tenant was accompanied by police.

The tenant submitted that since he had been no longer allowed to live in the rental unit he has been staying in a local hotel and he has, to date, paid \$1,280.00 for this accommodation. The tenant seeks compensation for this amount.

The tenant also submitted that he had lost his food from the rental unit and seeks compensation in the amount of \$456.00. And finally the tenant seeks compensation, in the amount of \$83.00, for not being able to access his television and telephone charger.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Section 52 of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) Be signed and dated by the landlord or tenant giving the notice,
- (b) Give the address of the rental unit,
- (c) State the effective date of the notice,
- (d) Except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) When given by a landlord, be in the approved form.

Based on the testimony from both parties I find the landlord did not issue a notice to end tenancy that complied with the requirements set out in Section 44 or Section 52 of the *Act*. As such, I order the landlord provide the tenant with immediate access to the rental unit and residential property.

Section 30(1) of the *Act* requires that a landlord not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

As the landlord has not ended the tenancy in accordance with the *Act*, I find the landlord cannot restrict the tenant's access to the residential property. As a result, I find it is

unlawful that the landlord requires the tenant to have any form of accompaniment by another party, such as a police escort.

Therefore, I order that in addition to the landlord providing the tenant with immediate access, I also order the landlord allow the tenant unfettered and unaccompanied access to until such time as the tenancy ends in accordance with the *Act*.

Section 54 of the *Act* allows a tenant who has entered into a tenancy agreement with a landlord to request an order of possession of the rental unit by making an application for dispute resolution. The Section goes on to say the director may grant an order of possession to a tenant under before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

As a result of my findings above, I find the tenant is entitled to an order of possession effective immediately.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As I have found the landlord has violated Section 30, 44, and 52 of the *Act* and the tenant was prohibited from accessing his rental unit to live in since February 16, 2015 I find the tenant has suffered a loss as a direct result of the landlord's violation.

I accept the value of that loss includes the cost of staying in alternate accommodation and the loss of access to his television and phone charge. I find the amounts claim for these items, \$1,280.00 and \$83.00 respectively, are reasonable and as such the tenant has established the value of these losses.

As to the landlord's claim for replacement food, I find that since the tenant was refused unfettered access to the rental unit it is premature for him to establish any claim for lost food that has remained in the rental unit since he was locked out. As a result, I dismiss this part of the tenant's claim with leave to reapply at a future date once he has access to the rental unit and can properly access how much he has lost.

Conclusion

I find the tenant is entitled to an order of possession effective **immediately after service on the landlord**. This order must be served on the landlord. If the landlord

fails to comply with this order the tenant may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,463.00** comprised of \$1,280.00 costs for alternate accommodation owed; \$83.00 compensation for television and phone access and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 11, 2016

Residential Tenancy Branch

