Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Waryam Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MT, MNDC, RPP, OPT,

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied requesting more time to cancel a Notice ending tenancy, an order of possession for the tenant, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, return of the tenants' personal property and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the hearing documents and the tenants' amended application, submitted to the Residential Tenancy Branch (RTB) on February 17, 2016. The tenant added a monetary sum of $1,500.00 as the claim for damage or loss under the Act.

Section 3.1 of the Act provides:

> ***3.1 Documents that must be served***
> *The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*
> *a) the application for dispute resolution*
>
> *b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;*

c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

d) a detailed calculation of any monetary claim being made;

e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

(Emphasis added)

The tenant initially applied requesting compensation; no detail of the sum claimed was included on the application submitted to the RTB on February 5, 2016. On February 17, 2016 the tenant amended the application to include a monetary claim in the sum of $1,500.00. No explanation of this claim was provided and no monetary worksheet or other detailed calculation of the claim was supplied and served to the RTB and landlord.

The tenant said the monetary claim represented the value of personal property. Therefore, as the tenant did not provide a calculation of the claim made setting out the monetary sum, that portion of the application is dismissed with leave to reapply.

The tenant said that the day prior to the hearing she submitted a second amendment to her application, along with documents. The documents were not before me or the landlord. I explained service requirements to the tenant

RTB Rules of Procedure, section 4.6 provides:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, ***a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing****.*

See also Rule 3 [Serving the application and submitting and exchanging evidence].

(Emphasis added)

The tenant said that the amendment was late as her tablet had malfunctioned. The tenant had tried to reschedule the hearing, her animals were seized and she had a lot of things to do and deal with. The tenant said that as a result of these multiple issues she had not been able to amend the application within the required time limit.

I applied section 4.6 of the Act and determined that an amendment made the day prior to the hearing would not be considered. The tenant had been able to amend her application on February 17, 2016, so demonstrated that she had the ability to do so within the applicable time limits. To accept an amendment when the other party has not seen the documents and been given an opportunity to respond would breach the standard of fairness. Therefore, the amendment was not allowed.

The tenant confirmed that on March 4, 2016 at approximately 6:30 p.m. she refused to accept evidence that the landlord attempted to personally serve. The landlord said he handed the documents to the tenant, who dropped them on the ground. The tenant said the landlord dropped the documents on the ground.

I find, on the balance of probabilities that the tenant was served with the landlords' evidence on March 4, 2016 when the landlord handed them to the tenant. The tenants' refusal to accept the documents and to leave them on the ground does not allow the tenant to avoid service. Therefore, the landlords' evidence was considered during the hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order of possession for the rental unit?

Must the landlord be Ordered to return the tenants' personal property?

Background and Evidence

The tenancy commenced July 1, 2012, rent is $775.00 per month due on the first day of each month. The landlord is holding a security deposit in the sum of $387.50 and pet deposit of $62.50.

The tenancy ended effective December 12, 2015 as the result of non-payment of rent and a 10 day Notice to end tenancy. The landlord obtained an order of possession and a monetary order on December 21, 2015 via the Direct Request proceeding process.

The landlord said the tenant did not vacate as she could not locate a new rental. The landlord submitted a document signed by the tenant, setting out an extension of the

tenancy to January 31, 201. The documents indicate there was agreement for an *extension of the eviction* and that the tenant must empty the apartment by January 20 or January 31, 2016. The tenant was to pay full rent.

The landlord stated that he thought the tenant had vacated the unit, as agreed, on January 31, 2016. He went to the unit several times on February 1, 2016; the tenant was not there but there were a lot of cats in the windows. The landlord became concerned and called the SPCA. The landlord had two witnesses with him when he opened the door to the unit; he thought some of the cats were in bad condition. There were 12 to 15 cats and four or five birds. The landlord said he did not enter the unit, but the SPCA did.

The landlord then changed the locks to the rental unit, with two witnesses present.

The tenant then returned to the rental unit and called the police when she could not enter. The landlord said he had made an error in changing the locks; he gave the tenant a copy of the keys.

The landlord submitted a copy of a Writ of Possession obtained from the Supreme Court of British Columbia on February 16, 2016.

The tenant said that she attended court on March 2, 2016 to apply for an extension of the Writ of Possession, as part of an *Order Made After Application*. The Court provided the tenant with an extension to vacate on March 4, 2016 no later than 4:00 p.m. A copy of the unsigned order supplied as evidence was dated March 3, 2016.

The tenant said that the landlord has taken her personal property and that she wants it returned. The tenant said that it was either another tenant in the building or the landlord who changed the locks to her unit. When the locks were change the landlord or the other tenant took anything of value that was in the unit. The tenant had an armoire, a nice chair, lamp, shower head and other valuables and personal papers that were all removed.

The tenant wants her personal property returned.

The tenant submitted that the landlord accepted rent payments in the sum of $375.00 and $200.00 and two other payments in the sum of $100.00 each. The landlord then refused to accept a payment of $775.00 in February 6, 2016 but accepted a payment of $400.00 on February 10, 2016. The tenant states that the landlord had reinstated the tenancy.

The landlord said that he did everything he was required to do. He called the SPCA as he thought the tenant had abandoned the animals. The animals were removed by the SPCA. The landlord agreed that he changed the locks without legal authority. As soon as the tenant returned he gave her the keys. The landlord then obtained the legal orders so he could take possession of the rental unit.

The landlord said that on February 26, 2016 he hired a bailiff to serve documents to the tenant, requiring her to vacate on February 29, 2016. The tenant then received an extension from the court. The landlord said that he did not enter the apartment when the SPCA entered and that he did not remove any of the tenants' personal property.

The landlord had two witnesses with him on February 2, 2016, when the SPCA entered the unit. The witnesses each wrote that they did not touch anything in the unit or remove any possession. They assisted the landlord in changing the deadbolt on the front door.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

From the evidence before me I find that the landlord has legal possession of the rental unit, as the result of a Writ of Possession issued by the Supreme Court of British Columbia. The matter related to the end of the tenancy has been decided. Res judicata is a rule in law that a final decision has been made and cannot be heard again. There are three preconditions that must be met before the principle of res judicata can operate:

1) The same question has been decided in an earlier proceeding;
2) The earlier decision was final; and
3) The parties to the earlier decision are the same in both the proceedings.

Therefore, as the end of tenancy matter has been decided and that decision was final, related to the parties in this dispute I find that res judicata applies and that the request for an Order of possession of the unit by the tenant is dismissed.

In relation to return of the tenants' personal property, I find that the tenant has failed to prove, on the balance of probabilities that the landlord took any of her possessions or was responsible for the loss of possessions. The landlord has demonstrated that he did everything he could to end the tenancy in accordance with the Act, with one exception.

The landlord has admitted he should not have changed the locks. He believed the tenant had complied with her agreement to vacate by January 31, 2016 and mistakenly changed the locks to the rental unit on February 2, 2016. Once the landlord realized he was not entitled to change the locks he gave the tenant the keys.

I have given the written statements issued by the two landlord witnesses little weight as they were not at the hearing to be questioned.

The tenant has not provided any evidence of the items she says were removed. There were no examples of specific belongings submitted as evidence; such as photos or cost estimates. No corroborating evidence of the property the tenants says was taken was submitted in support of the allegation the landlord had removed the property. The tenant did not come forward with any witnesses who might corroborate her submissions. There is no dispute that the SPCA entered the unit to remove animals, but no evidence that the landlord entered and removed items.

Therefore, in the absence of evidence that the landlord did anything but open the door, allow entry by the SPCA and change the locks, I find that the claim for return of personal property is dismissed. The tenant had the burden of proving that her personal property had been taken by the landlord and in the absence of any corroborating evidence I find that the claim is dismissed.

Conclusion

The application is dismissed.

The matter related to possession of the rental unit has been previously decided.

This decision is final and binding and 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 29, 2016

Residential Tenancy Branch