



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, AAT, LAT

Introduction

The tenant applies for compensation for the cost of moving, for a rekeying charge for a return of overpaid rent for recovery of a pet damage deposit and another damage deposit and for the first and last month's rent for his new accommodation. He also seeks orders to allow him access to the premises and to change the lock to his rental unit.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

It was apparent that the landlord is Mr. D.V. and that the other named respondent Mr. D.D. is the building manager and is not the tenant's landlord.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is being forced to move or that he has overpaid rent or was wrongly charged for a key change? Does it show the tenant is in need of an order allowing him access to or from his rental unit or that a lock change is required?

Background and Evidence

The rental unit is a two room suite in a twenty rental unit building. The two rooms are a bedroom and kitchen. The building occupants share a common washroom.

The tenancy started in 2007. The current monthly rent is \$425.00. It is paid directly to the landlord from the welfare office on the tenant's behalf.

The landlord holds a \$200.00 security deposit; no pet damage deposit.

The tenant has given his notice and is vacating his rental unit at the end of April, 2016, though he hasn't located a new place yet.

The tenant testified and submitted two statements in support of his claim.

In his typewritten statement he avers to a list of complaints:

- In February of this year the landlord change his lock and he had to smash his door in to enter his suite.
- The manager does "zero" maintenance around the building.
- The manager is a hoarder and it is promoting the proliferations of pests in the building.
- The manager utters threats to the tenants.
- The manager breaks and enters suites whenever he feels like it.
- The manager kicks out tenants for false infractions.
- The power in the building goes out and the manager is tardy in restoring it by throwing the necessary breaker. The tenant used to have access to the electrical panel located elsewhere in the building so that he could throw the breaker but his access was terminated.
- The manager has committed criminal acts of "bullying, instigation, intimidation, uttering threats, etc."
- The air in the building is bad because of the filth from lack of maintenance and because of the manager's hoarding.
- The washrooms go unclean for months.
- The delivery of mail to tenants is through the manager and he is tardy in delivering it.
- The manager has tried to instigate fights with him.
- There has been an ongoing problem with bedbugs and now with cockroaches too and other bugs.
- The landlord and manager refuse to issue rent receipts.

- At least three people have died in the building while Mr. D.D. has been manager and the tenant feels that the manager's failure to answer his door or not be around contributed to two of those deaths.
- The manager looted money and drugs from one of the dead men.
- Once, the manager took three days to clean feces from a floor.
- Someone has been watching the tenant's female guests when they shower. The tenant intimates that it is the manager.
- The manager, who lives in the next apartment to the tenant, listens to conversations through the wall and listens outside his door.
- The tenant's girlfriend has twice caught the manager "creeping around my apartment in the early hours" of the morning. On one of the occasions the manager was outside the front door. On the second occasion the manager opened the door and was measuring the door frame.
- A few years ago the manager interfered when the cable installation man was running cable to the tenant's rental unit from another rental unit.
- The tenant is missing over eight years of rent receipts and has thereby lost them as deductions against his business income.

In his handwritten statement the tenant claims:

- For the first two and one half years of the tenancy he went without heat and went through four base heaters before adequate heat was finally provided.
- He was without water for a month at an unspecified time.
- He has a big hole in his bedroom wall created by a plumbing repair and the landlord has failed to fix it.

The tenant testifies that he's never received a rent receipt. He acknowledges that the welfare office pays his rent and that it might get a receipt, but all he gets is a stub.

The tenant says that he use to have a key for the basement electrical area so that he could turn the power to the building back on if a breaker tripped. That access was removed at some time. He complains that the manager is dilatory in turning power on when a breaker trips.

He says he should get his deposit money back now.

He says that he shouldn't have to move but the landlord and the manager's conduct is forcing him to do so. He says that his moving costs will be between \$450.00 and \$480.00.

He says the landlord charged him \$30.00 for a lock change because he couldn't get into his apartment. He says he had to bust into his apartment because he did not have his keys and he could not get the landlord to open his door for him.

The tenant says that his welfare receipts show that he has been paying \$450.00 rent; \$25.00 more than the agreed rent. He claims recover of the \$25.00 for all the months of his tenancy.

He says the police told him he could change his own locks and so wants an order to allow him to do so.

He says he's had the hole in his bedroom wall for years and that a countertop has been sitting against a wall for seven years, awaiting installation by the landlord.

He says the water failure noted above happened two or three years ago and that he bathtub in the common washroom hasn't worked for five years.

The tenant ended his testimony, but before the landlord could begin a response, the tenant dropped out of the telephone hearing. Before leaving, he noted that his phone battery was low. After ten minutes the tenant had not rejoined the hearing. The landlord was called upon to respond. The tenant did not rejoin the hearing during the approximately fifteen minutes it took for the landlord to give his evidence.

The landlord denies all the tenant's claims generally.

He says the tenant was charged a \$30.00 key fee because he'd reported that he had lost his keys. He paid the \$30.00 without objection after the landlord had the lock rekeyed and issued the tenant a new key.

He says that he has received only \$425.00 rent from the welfare office for the tenant's rent.

He says that two years ago the building suffered a drain clogging problem and that a hole was cut in the tenant's bedroom wall to facilitate repair. He says that the manager was to repair it. He says the building was not without water for three weeks as the tenant testified.

The landlord says that years ago there was fluctuation with the tenant's heat. There is central heating in the building and some rooms are hotter or colder than others. He

says the problem was solved by providing plug in heaters and then by wiring in a baseboard heater.

The manager Mr. D.D. testifies that the tenant lost his keys and thus the rekeying and \$30.00 charge.

He says he has never entered the tenant's apartment.

He says he deals with rent and the tenant's rent payment from welfare has always been \$425.00, not \$450.00.

He says the tenant used to have access to the basement with a key but that access was removed because of reports of people frequenting the basement and of drug use there. He says the police told him to restrict access. Now, another person has access to attend to electrical issues.

He says that when the tenant is upset he sends him 50 to 60 texts a day.

He says the water drain issue lasted for four days.

He says he was attending to repair the hole in the tenant's wall but the tenant kept delaying his permission for him to enter. Then the tenant asked that he be allowed to repair the hole himself. He says he delivered the gyproc for the tenant to conduct the repair but the tenant never has done so.

Analysis

In regard to the tenants' claim for deposit money, that must await the end of the tenancy. I would refer the parties to s. 38 of the *Residential Tenancy Act*, which requires that after the end of the tenancy the landlord must attend to settling the deposit money in a timely fashion.

As the tenant is moving from the rental unit shortly, I decline to consider issuing any access order or a lock change order.

The tenant has filed documentation from the welfare office that shows that it is paying \$425.00 for his rent, not \$450.00. I dismiss the tenant's claim for rent overpayment recovery.

The evidence of the parties regarding the goings on at this building is composed of testimony only. It is the tenant's word against the landlord and the building manager's word; a "he said / she said" situation.

The initial burden of proof of an allegation falls on the one making the allegation; the tenant in this case. He has not provided corroboration of any of the facts he alleges. Even a simple photograph of the complained of areas in the building would have been of use.

There is no reasonable basis for me to prefer the testimony of the tenant over that of the landlord or the building manager. For this reason, I find that the tenant has not proved his allegations about why he has to move out. I dismiss his claim for moving costs or for first and last month's rent at a new accommodation (it should be pointed out that last month's rent cannot be lawfully demanded in advance by a residential landlord in British Columbia).

It has not been shown that the rekeying of the tenant's door was caused other than by the tenant losing his keys and so I dismiss his claim for the \$30.00 he paid for it.

Conclusion

The tenant's application must be dismissed.

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: April 05, 2016

Residential Tenancy Branch

