



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; and other issues.

At the outset of the hearing the tenant's advocate withdrew the tenant's claim to recover the security deposit as the tenant's advocate understands that the tenancy has continued.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on November 03, 2015. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

An advocate for the tenant appeared and was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant's advocate stated that this tenancy started on September 01, 2015. The tenant rents a room in this unit on a month to month basis and pays a monthly rent of \$475.00.

The tenant's advocate stated that the landlord entered the tenant's room without proper notice and found drug paraphernalia in the tenant's room. The tenant informed his advocate that these items did not belong to the tenant but had been left in his room by a friend. Due to this the landlord kicked the tenant out of his room without notice as the landlord has zero tolerance for drugs. The tenant had nowhere to go and from approximately October 04 to October 26, 2015 the tenant had to sleep on the streets. The tenant has repeatedly attempted to get back into his unit and was refused entry by the landlord until October 26, 2015.

The tenant sought help and the Residential Tenancy Branch contacted the landlord and informed the landlord that this was an illegal eviction and that for entry into a tenant's room a landlord must provide proper written notice. The tenants advocate stated that she also called and spoke to the landlord about these issues and that the landlord had a right to serve notice to the tenant and file an application for dispute resolution if he had any concerns.

The tenant's advocate stated that the tenant had paid rent for October of \$475.00 and as he was prevented access to his room by the landlord he seeks to recover the rent paid for the three weeks he was prevented access to his unit.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's limited documentary evidence before me and the statement of the tenant's legal advocate.

I refer the landlord to s. 29 of the *Act* with regard to entry to the tenant's rental unit:

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.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I am satisfied with the undisputed evidence before me that the landlord did enter the tenant's room without proper notice. If the landlord found drug paraphernalia in the tenant's room the landlord's recourse would be to serve the tenant with a One Month Notice to End Tenancy for cause. A landlord may not simply "kick" a tenant out of his room for which the tenant has paid rent.

I find the tenant was illegal evicted from his room for a period of three weeks between October 04 and October 26, 2015. As the tenant had paid rent for his room for this period I find the tenant is entitled to recover that rent to an amount of **\$352.41** for the 23 days he was unable to access his room.

Furthermore I find the tenant is entitled to a further monetary award for the loss of quiet enjoyment of his room due to the landlord entering without proper notice. This illegal entry resulted in the tenant becoming homeless for this 23 day period and having to sleep on the streets. I therefore award the tenant a further amount of **\$150.00** for his loss of quiet enjoyment of his rental unit.

Conclusion

I HEREBY FIND in favor of the tenant's reduced monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$502.41** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: April 27, 2016

Residential Tenancy Branch