



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, RPP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$10,870 for money owed or compensation for damages or loss under the Act, regulations or tenancy agreement.
- b. Return of all or part of the security deposit.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally of the landlord on March 21, 2016. With respect to each of the applicant's claims I find as follows:

Preliminary Issue:

At the start of the hearing I advised the parties neither party had provided with evidence and that the only documents I had on file was the Application for Dispute Resolution and a handwritten list of claims. The landlord testified he had faxed a number of documents to the Residential Tenancy Branch shortly after he had been served with the Application for Dispute Resolution. He also testified he had provided the documents the tenant. I determined it was appropriate to proceed with the hearing. I permitted the landlord to re-fax only those documents he had previous sent to the Branch. The landlord re-faxed those documents shortly after the conclusion of the hearing.

The tenant and those assisting him advised that they had not sent in documents. Later in the hearing they stated they had receipts from two hotels in their possession. However, the landlord denied receiving those documents.

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- 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
- copies of all other documentary and digital evidence to be relied on at the hearing.

When submitting applications online, the applicant must submit the required documents to the Residential Tenancy Branch directly or through a Service BC office within three business days of submitting the online Application for Dispute Resolution.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

I determined it was not appropriate to permit the tenant to submit hotel receipts during the hearing for the following reasons:

- a. The Rules of Procedure provide that to the extent possible the applicant must submit copies of documentary and digital evidence. The tenant would have had

the documents in his possession as the hotel stays occurred prior to the date of filing the Application for Dispute Resolution.

- b. Rule 3.14 requires the applicant to give documentary evidence to the respondent and the branch not less than 14 days prior to the date of the hearing.
- c. The tenant failed to provide a sufficient reason why the two hotel receipts had not been provided to the Branch and the respondent prior the hearing.
- d. The hotel receipts is not new and relevant evidence not available at the time the application was made.
- e. To receive this evidence at this time would unreasonably prejudice the respondent (he was not been given an opportunity to check whether the receipts were valid) and amount to a denial of the principles of natural justice.

I dismissed the claim brought by Cor C as she is not a tenant. She was not a party to the tenancy agreement and the landlord was not aware that she was moving in.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to the return of his security deposit.

Background and Evidence

The LN and the landlord entered into a one year fixed term tenancy agreement that provided that the tenancy would start on February 1, 2016 and end on January 31, 2017. The rent was \$1100 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$550 at the start of the tenancy.

The tenant gave the following testimony:

- He is 69 years of age and had a heart condition.
- He was very confused on February 5, 2016 when the landlord came into the rental unit and told him the police were coming and he would have to vacate the rental unit.
- He denied signing a Mutual Agreement to End the Tenancy or an Inspection Report that authorized the landlord to take all of the belongings in the rental unit to the garbage dump.
- He felt intimidated and that he had no choice but to leave. He testified he felt he would be physically harmed.

- He left because he had to find his step daughter. He denies he was abandoning the rental unit.
- As a result of being forced out he spent nights at the Best Western Hotel and the Rainbow Inn.
- He lost the following goods:
 - 2 beds that were 5 years old (worth \$800 each),
 - Tools including a socket set (\$120)
 - 3 PS3 machines and other computer goods worth \$1500

Cou C. testified as follows:

- She was the step daughter of the tenant and was going to live with him (the rental unit is a two bedroom unit and she was given the Master bedroom.
- The bundle of electronics that was lost included HP laptop, Acer Lap top, her cell phone and 3 PS3 video machines
- The tenant had a drill set/socket set that was lost.
- She attempted to call the landlord to those belongings and her other belongings back but they failed to return her call.
- She testified she lost the following goods:
 - 20 pairs of designer jeans
 - 4 pairs of runner
 - 3 leather jackets
 - A lap top worth \$899.
 - Cell phone
 - Car amp and speakers
 - Oak table.

The representative of the landlord testified as follows:

- He had talked to the previous landlord who advised him of difficulties with the tenant and those who were living with him.
- The tenant failed to advise the landlord that his step daughter was going to live in the rental unit with him.
- He visited the rental unit and upon being let in he discovered the rental unit was in a shambles and there was drug paraphernalia everywhere.
- At this stage he told the parties that the police would have to be called given the presence of the drugs.
- Cou C immediately vacated the rental unit in a hurry.
- He engaged in a conversation with the tenant. During that conversation the landlord stated he would be taking steps to serve a one month Notice to End Tenancy given the presence of the drugs. The landlord testified the tenant

proposed that he would leave immediately if the landlord reimbursed the rent that had been paid for February. The tenant denies it was his suggestion. The tenant does not deny being reimbursed the rent for February.

- The landlord went to his office and returned 45 minutes later. At that time the parties signed a mutual agreement to end the tenancy, a Condition Inspection Report and the landlord reimbursed the tenant the rent for February in the form of a cheque in the sum of \$1100.
- The landlord testified he went with the tenant when the tenant placed all of his electronic gear into a shopping cart and moved it to his truck.
- The landlord testified the tenant orally told the landlord he could throw out all of the belongings that remained in the rental unit. The Condition Inspection Report has a hand written term that states "I LN agree that there is under \$500 worth of items let in the unit and it can all be taken to the dump". The Condition Inspection Report also states in another area that the tenant agree that the security deposit could be retained by the landlord.

Upon questioning later in the hearing the tenant admitted signing the Mutual Agreement to End the Tenancy but stated he signed it under duress.

Analysis

Section 7 of the Act states as follows:

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.

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 the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the

damage

- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

The applicant has the burden of proof to present sufficient evidence to establish his claim on a balance of probabilities. The tenant failed to produce any documentary evidence including any evidence to verify his loss. The only document produced apart from the Application for Dispute Resolution was a handwritten document that set out the items lost. It included a claim for 30 pairs of designer jeans worth \$100 each (clothes of his step daughter). However, his step daughter testified she lost 20 pairs of designer jeans. She also testified she commonly shops at thrift store. The tenant failed to prove that thrift stores commonly charge \$100 a pair for jeans. The list claims for 5 leather jackets. However, the tenant's step daughter testified she lost 3 leather jackets.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)"

After carefully considering all of the evidence I determined the testimony of the landlord is more credible than the testimony of the tenant and his witnesses for the following reasons:

- I found the testimony of LN and Cou C to be evasive and far from complete. Further it is not in harmony with the preponderance of the probabilities which a practical and informed person would reasonable. When LN gave his evidence in chief he failed to advise that the reason the landlord wanted to end the tenancy was because of the drug paraphernalia. He also failed to testify that he had his truck in the parking lot and that he removed the electronic equipment to the truck.
- The documents are inconsistent with the tenant's version of events. At first the tenant denied signing a Mutual Agreement to End the Tenancy. Later, he testified he signed it but signed it under duress. I find as a fact that the tenant

signed the Mutual Agreement to End the Tenancy and the Condition Inspection Report authorizing the landlord to dispose of the remaining documents.

- The tenant failed to testify at first that the landlord went back to his office to prepare the documents and to get a cheque.
- The tenant, his step daughter and ex wife were admonished a number of time for prompting the person who was testifying.
- I found the testimony of Cou C to be subject to exaggeration and not in harmony with the preponderance of evidence.

After hearing the disputed evidence I made the following factual determinations:

- The landlord came to the rental unit and upon being let in by the occupants of the rental unit he discovered a significant amount of drug paraphernalia. He told the people there that the police would have to be called. Cou C left shortly after that and was not present to the following discussions.
- I am satisfied the landlord and the tenant mutually agreed to end the tenancy on February 5, 2016 provided the rent was reimbursed to the tenant.
- I do not accept the submission of the Tenant that this agreement was obtained by duress recognized by law. The landlord has a right to report illegal activity in the rental unit to the police. Further, the landlord went to his office to prepare the documents and to get a cheque. This took about 45 minutes. This is not consistent with a party who seeks to rely on the defense of duress.
- As the parties agreed to end the tenancy on February 5, 2016, the tenant has no claim for subsequent hotel bills that he may have paid. In any event, he was reimbursed the rent for February.
- I find as a fact the tenant took all of the belongings he wished to remove to his truck after he agreed to end the tenancy and authorized the landlord to dispose of the remaining belongings. I do not accept the submission of the tenant that the landlord would have refused the tenant's request to remove other belongings. The landlord had no use for these belongings and it would have been in the landlord's best interest had the tenant removed it or made arrangement to remove it the next day.
- I am satisfied that the Tenant agreed with the landlord that the goods could be disposed of and that the landlord could keep the security deposit in compensation for this.

Conclusion:

In summary I determined the tenant has failed to present sufficient proof to establish a claim against the landlord. He failed to prove that he is entitled to compensation for the ending of the tenancy as he mutually agreed to end the tenancy on that date and the

landlord reimbursed him the rent for February. The claims for the cost of the hotel bills are dismissed. Further, I am satisfied that the tenant removed all of the belongings that he wished to remove and he authorized the landlord to dispose of balance and agreed the landlord could keep the security deposit in compensation for this and for the cost of cleaning the rental unit. As a result I dismissed the claim for the cost of replacing lost belongings. Similarly I dismissed the tenant's claim for the return of the security deposit as he authorized the landlord to keep it.

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: May 06, 2016

Residential Tenancy Branch