



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS BENEVOLENCE GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RPP, OPT

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order of Possession of the rental unit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to return the tenant's personal property.

The tenant and agents for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing; however, the landlord's evidence was provided late and was not received by the Arbitrator prior to the hearing and has not been considered. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order of Possession of the rental unit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to return the tenants personal belongings?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2015 and was a fixed term tenancy which was due to end on May 28, 2016. The tenant rented a room in this

multiple room hotel for the monthly rent of \$475.00. Rent was due on the 1st of each month.

The tenant testified that he came home from work and found the landlord had changed the locks to his rental unit. The landlord did let the tenant in to get his charger but the tenant was not allowed back in to get any more of his belongings. The tenant testified that the landlord did not serve the tenant with a Notice to End Tenancy; the landlord did not have an Order of Possession or a Writ of Possession to evict the tenant from his unit.

The tenant testified that this has been stressful for him and he had to live on the streets until he could get into a shelter where he is currently living without any of his belongings. The tenant testified that the landlord had no right to go through his belongings or remove them from the rental unit. The tenant seeks an Order of Possession of the rental unit and an Order for the landlord to return his personal belongings.

The tenant testified that due to the landlord's unlawful actions in evicting him he seeks compensation from the landlord and as some of his belongings may be missing or damaged. The tenant seeks the amount of \$3,000.00 in compensation.

The landlord's agent testified that they had applied for an Order of Possession for unpaid rent and a Direct Request Proceeding was held on March 08, 2016. The landlord received an Order of Possession and this Order was served to the tenant on March 18, 2016. The tenant was given two days to vacate the rental unit; however, the tenant agreed to pay the rent and the landlord decided not to enforce the Order of Possession and the tenant was given a rent receipt for use and occupancy only.

The landlord's agent testified that the landlord provides supportive housing for tenants and the landlords' agents have worked closely with the tenant to try to maintain his housing. The tenant signed a new tenancy agreement which stated that it was a fixed term tenancy which must end on May 31, 2016 and the tenant initialled the boxes required and was fully aware that he would have to vacate the rental unit on May 28, 2016. The tenant failed to vacate on that date and the landlord's agent testified they thought the March 08, 2016 Order of Possession was still in force. The landlord's agent agreed she did not go to Supreme Court for enforcement of that Order and did not have a writ of Possession from Supreme Court.

The landlord's agent testified that as the tenant was supposed to vacate his rental unit on May 28, 2016 the landlord had re-rented the unit to a new tenant for June 01, 2016.

The locks were changed on the tenant's unit and the tenant's belongings, consisting of two boxes and a chair, were removed into the landlord's storage. The tenant was told he could collect his belongings at any time but has failed to do so.

The landlord's agent testified that because the room has now been re-rented the landlord is not able to evict that tenant without cause and can only offer the tenant a room in one of two other of the landlord's buildings close by. The landlord's agent testified that they do not intend to charge the tenant for the storage of his belongings and he can collect them once he has found new accommodation.

The tenant testified that he would prefer to live in a room in the same building as the other two buildings with rooms available have tenants on drugs and other issues and the tenant does not want to live in either of those buildings. The tenant also testified that he had three boxes of belongings and not the two stated by the landlord's agent.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 54(1) and (2) of the *Act* which states:

54 (1) *A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.*

(2) *The director may grant an order of possession to a tenant under this section 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.*

I am satisfied that the landlord did obtain an Order of Possession for the rental unit on March 08, 2016; however, the landlord choose not to enforce that Order in Supreme Court and obtain a Writ of Possession prior to evicting the tenant.

It is not sufficient for the landlord to assume because the tenant signed a fixed term tenancy agreement that he would vacate on May 28, 2016 that the landlord could then end the tenancy without first enforcing the Order of Possession in Supreme Court. I refer the parties to s. 57(2) of the *Act* which states:

(2) *The landlord must not take actual possession of a rental unit that is occupied by an over holding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.*

Without a Writ of Possession in place the landlord is not entitled to restrict the tenant's access to the rental unit, change the locks of the rental unit or remove the tenant's belongings from the rental unit. I find the landlord did not comply with s. 57(2) of the *Act*.

The tenant is seeking an Order of Possession of the rental unit; however, the landlord has now re-rented that unit to another tenant and cannot legally evict that tenant. Due to this I find I am unable to issue the tenant with an Order of Possession. The landlord did offer the tenant two alternative rooms to rent in two of the landlords other buildings. The tenant was adamant he would not live in either of those buildings due to issues with other tenants living there. Consequently, I find the tenant is entitled to some compensation for the stress and inconvenience of being evicted from his rental unit and having to move into a shelter.

In deciding the amount of compensation I have considered the landlord's non-compliance with the *Act*, the stress and inconvenience suffered by the tenant and the subsequent homeless status the tenant now experiences. In light of the above I find it would be reasonable for the landlord to compensate the tenant the amount of **\$1,000.00** and a Monetary Order has been issued to the tenant pursuant to s. 67 of the *Act* for this amount.

With regard to the tenant's claim for compensation for lost belongings; the landlord's agent testified that they collected all of the tenant's belongings in the unit and now have these belongings safely stored. The tenant is welcome to collect these when he is able. The tenant has insufficient evidence to show that any of his belongings are missing at this point in time and therefore I am not prepared to award the tenant any compensation for damaged or missing belongings. When the tenant retrieves his belongings if any items are damaged or missing the tenant is at liberty to reapply for compensation but will have the burden of proof to show what items were damaged or missing through the landlord's actions or neglect.

With regard to the tenant's claim to recover his personal belongings; I Order the landlord to return the tenant's belongings to him when the tenant arrives to collect them after securing alternative accommodation. The landlord is not entitled to charge the tenant any storage fees for the time his belongings have been stored by the landlord as the tenant's belongings are in the landlord's storage due to the landlords non-compliance with the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,000.00**. 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.

I Order the landlord to return the tenant's personal belongings when the tenant arrives to collect them.

The tenant's application for an Order of Possession of the rental unit is 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: June 23, 2016

Residential Tenancy Branch