



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O RR FF

Introduction

Both parties attended the hearing and the landlord confirmed receipt of the Application for Dispute Resolution by registered mail. I find the landlord was legally served pursuant to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) Compensation of \$15071.27 for
 - (i) the landlord's illegal entry pursuant to section 29;
 - (ii) an illegal Notice to End Tenancy pursuant to sections 49 and 51(2)(b) and constructive eviction pursuant to Policy Guideline 6 (claims their moving costs);
 - (iii) costs of Telus service as landlord removed the TVs
 - (iv) for stress and aggravation caused by actions of the landlord;
 - (v) their filing fee.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord failed to protect their peaceful enjoyment contrary to section 28 of the Act, illegally entered their unit without notice contrary to section 29 and constructively evicted them? Did the landlord serve an illegal Notice to End Tenancy? Are the tenant's entitled to compensation and if so, in what amount?

Background and Evidence

Both parties and eight witnesses attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

It is undisputed that the arrangement commenced November 15, 2015, rent was \$1200 a month and there was no security deposit. The landlord said she never intended to be a landlord. Her mother died and she was executrix of the estate. She understood probate would take about 6 months. Through a hockey association, she knew the tenant and understood he would appreciate a larger space where his children could

visit. She offered to rent the home to him for \$1200 a month which he said was the same as he paid for a two bedroom furnished unit. The realtor testified that market rent for this home would be \$2400 minimum. There was no written tenancy agreement.

The landlord said she explained to the tenant that she would rent to him just until probate was granted. She said he understood and said he could be out in a couple of weeks once that happened. A friend of the landlord, R.M., said the tenant brought over a box a couple of weeks before he moved in. She was helping the landlord move out some of her mother's possessions and she heard this conversation. Another friend, G.P., said they were all in the same hockey association and she overheard several conversations regarding the possible 6 month timeframe for probate and the temporary tenancy. Probate was granted in April and the landlord sent a text telling the tenant it was time to leave. The tenant said the landlord asked him over for drinks. He brought over a 6 pack and they kept talking to him about signing something. He said he was pressured into signing a mutual agreement to end tenancy effective June 30, 2016 (copy in evidence). His girlfriend said he was drunk at the time.

The landlord recounted the history differently. She said the tenant came to pay the rent on May 2, 2016 and asked what would happen if he was not able to vacate by June 1, 2016. They asked him to come over on May 5, 2016 to discuss and agree on a move out date. He negotiated June 30, 2016 and signed the agreement. However, he vacated on May 31, 2016 allegedly because of subsequent actions of the landlord.

The tenant claims compensation as follows:

1. \$7,200: for an improper Notice to End Tenancy for landlord's use of the property (section 51(2)(b))
2. \$1200: Return of May 2016 rent as the landlord illegally entered their unit without proper notice.
3. \$1500: moving costs for they had to leave immediately and had to interrupt schedule of friends to help them. He has no invoices but supplied cost of fuel and beer and estimates costs of \$500.
4. \$71.27: for Telus bill for May. They say they have not received it yet but base it on the regular monthly payment. The landlord removed the TVs on May 22, 2016.
5. \$5,000: for stress and aggravation. They had to find a place that would take kids and a dog and spend \$2900 to secure a new place in an undesirable area. This was very stressful but the landlord's removal of most of the furniture on May 22, 2016 left them no choice as they had no table and other necessary items. They had to eat on the floor. The landlord said she was disposing of her mother's estate as is her duty as executrix. They offered and intended to move extra

furniture from the basement up to the tenant's main living area on May 22, 2016 but when the husband and male friend, R. M., came at 12:15 p.m. pursuant to the Notice of Entry, no one was home. When they came back for another load, the tenant asked about 2 p.m. how much longer they would be. They told him one hour and he left but came back a short time later and began swearing and threatening to beat up the husband of the landlord and call the Police. The husband made some remark about "What goes around, comes around and we gave legal notice". The tenant told them that they no longer had access to the home and told them to leave, using colourful language. Both husband and witness testified to this event and the tenant's account was similar. They said they were unable to move up the basement furniture due to the tenant's actions and the landlord was told the tenant had bought a new TV for the bedroom as the mother's one did not work. The tenant's witness said it was her TV that the tenant identified as new and it was broken.

In evidence is the monetary worksheet, written statements of the parties and witnesses, photographs, the Mutual Agreement to End Tenancy, and many emails and letters.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The female witness of the tenant contended she was a tenant too. I find section 1 of the Act defines a tenancy agreement as being an agreement, whether written or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas...and includes a licence to occupy a rental unit. A tenancy is defined as a tenant's right to possession of a rental unit under a tenancy agreement. I find the weight of the evidence is that the tenancy agreement was made between the landlord and the male tenant. I find the landlord's evidence credible that the female occupant moved in later without her permission and was not part of the tenancy agreement. Her credibility is well supported by several witnesses who heard the conversations between her and the male tenant regarding the terms of the tenancy. However, the female witness' evidence was heard as part of the hearing.

I find the terms of the tenancy were that the tenant would occupy the unit "until probate" which might occur in 6 months or less at a rent of \$1200 a month and he agreed he could move out in two weeks or less when probate was granted. I find the weight of the evidence is that this was not intended to be a longer term tenancy and the tenant acknowledged that. I find probate occurred in April 2016 and the landlord sent him an

email advising him that he should vacate by June 1, 2016. She never served him a Notice to End Tenancy although a lawyer sent him a letter about the situation.

I find as fact that when the tenant came to pay his May rent on May 2, 2016, he expressed his concern regarding a June 1, 2016 and asked for June 30, 2016. I find the landlord after consulting her husband invited him over 'for drinks' on May 5, 2016 to agree on the move out date of June 30, 2016 as he requested. The tenant denies the meeting was to discuss a final agreement regarding the move-out date but I find this unlikely as he had already asked on May 2, 2016 what would happen if he did not move on June 1, 2016 and had asked for a June 30, 2016 move out date. I find the landlord's daughter heard this conversation and witnessed to it. Both parties agree that the tenant came on May 5, 2016 with 6 beers and signed a Mutual Agreement to End Tenancy on June 30, 2016 but the tenant says he was pressured into it. Statements from his witnesses say he was drunk and did not know what he was doing. I find the weight of the evidence is that he signed a legal Mutual Agreement to End Tenancy. I find he brought the beer to the meeting and if he was drunk, that was his own doing and his own responsibility. I dismiss his claim that he was pressured into it or that he was not mentally competent to sign the mutually agreement. I find the landlord's evidence persuasive as she said they hugged as he left and he said June 30, 2016. Her evidence is supported by emails indicating he was sent a signed copy at the time and there was no correspondence in evidence showing he protested it, mentioned that he was drunk or of wanting to revoke it.

In respect to the tenant's claim for monetary compensation, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

In respect to the tenant's claim for \$7,200 for an improper Notice to End Tenancy for landlord's use of the property (section 51(2) (b)), I find there was no Notice to End Tenancy. I find there was a verbal agreement in this verbal tenancy that the tenant would vacate shortly after probate. I find he was advised probate had been completed by email and by a lawyer's letter and asked to vacate as he agreed. I find when he negotiated with the landlord he signed a Mutual Agreement to End Tenancy on June 30, 2016. I find him not entitled to compensation under section 51 of the Act as there was no illegal Notice to End Tenancy.

Regarding the \$1200 request for return of May 2016 rent as the landlord illegally entered their unit without proper notice, I find section 29 of the Act sets out requirements for Notice of Entry. Section 29(1)(b) provides the landlord must give at least 24 hours Notice and not more than 30 days before the entry which includes the purpose date and time which must be between 8a.m. and 9p.m., unless the tenant otherwise agrees. I find the evidence is the landlord gave written notice on May 20, 2016 by email. Although the tenant contended the lawyer's letter dated May 19, 2016 said 'the weekend' without specifying a date and time, I find the landlord's email on May 20, 2016 specified they would be there on Sunday May 22nd at noon. The purpose was explained in the lawyer's letter as the landlord needed to remove items that were being sold. I find sufficient Notice of Entry was provided to the tenant so I dismiss this portion of his claim.

In respect to the tenants claim for \$1500: moving costs for they had to leave immediately and had to interrupt schedule of friends to help them, I find he had negotiated a move out date of June 30, 2016 so did not have to vacate on May 31, 2016. Furthermore he has no invoices to support this claim. The tenant claimed that by the landlord removing furniture from the home, they were forced to move and were constructively evicted. I find the weight of the evidence from the landlord and witnesses is that other furniture was available in the basement and the tenant denied the landlord and his friend access to move it upstairs. I find the tenant by his own actions made the living situation without most of the furniture upstairs more difficult. I find the landlord by act or neglect did not cause this situation so I dismiss the tenant's claim for compensation.

In respect to his claim for \$71.27: for Telus bill for May because the landlord removed the TVs on May 22, 2016, I find insufficient evidence to support his allegation that they had no TV. Furthermore, the other TVs were not removed until May 22, 2016 so the tenant had benefit of Telus for most of the month. I dismiss this portion of his claim.

Regarding his claim for \$5,000 for stress and aggravation, I find as stated previously, that they did not have to vacate May 31, 2016. They could have used the extra month to find a new place. Furthermore, the tenant knew in April that probate was finalized per the email dated April 24, 2016 and on May 5, 2016 I find he freely negotiated a move out date of June 30, 2016. I find the landlord did not through act or neglect cause the tenant's situation of having to find a place for June 1, 2016. As stated previously, I find the landlord left some furniture in the home and was willing to move up other necessities from the basement on May 22, 2016 but the tenant denied them access to finish the task. I find they did not mitigate their problems by moving up the furniture or asking the landlord to give them a table or even requesting the landlord to come back and help move up furniture from the basement. I find the landlord did not through act or neglect cause the tenant's stress and aggravation so I dismiss this portion of his claim.

In summary, I find the weight of the evidence is that the landlord did not through act or neglect violate the verbal tenancy agreement terms or the Act. Therefore I find the tenant not entitled to compensation pursuant to sections 7, 29 or 67.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply.

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 15, 2016

Residential Tenancy Branch