



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, MNDC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on September 13, 2016 wherein the Tenant sought an Order restricting the Landlord's right to enter the rental unit as well as for monetary compensation for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an Order restricting the Landlord's right to enter the rental unit?
2. Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant testified that his tenancy began October 13, 2015 and he pays monthly rent of \$422.20 per month.

The Tenant sought a Monetary Order in the amount of \$1,000.00 for compensation for his tent trailer which he says was parked in the underground visitor parking area and wrongfully moved by the Landlord. He claimed he discovered it was missing in July of 2015. He further stated that the value of the tent trailer was much more than the \$1,000.00 claimed, likely more than \$3,000.00 as it has three queen sized beds, a furnace, a sink and was in "top shape". He claimed that it had more than financial value as he and his son viewed it as their "survival craft" because at the time he thought he was going to be evicted.

The Tenant further stated that he was told by the Landlord's staff that the tent trailer had to be moved within 48 hours. He said that he spoke with a representative of the Landlord who informed him that the tent trailer was going to be towed away if he didn't make arrangements to move it. He stated that he worked with "J.", the caretaker at the time and informed J. that the tent trailer was going to be removed at 4:00 p.m. by people the Tenant had sold the tent trailer to.

The Tenant further stated that when they went to the parking lot the tent trailer was gone. The Tenant claimed that the tent trailer was "towed to an unknown towing yard". He claimed that he eventually found the tent trailer and gave it to a woman by the name of "L." because she and her husband paid the towing fee of \$498.00.

In support of his claim for compensation for the tent trailer the Tenant submitted an unsigned letter from L. who writes that she had an agreement with the Tenant to purchase the tent trailer at a price to be determined. She further writes that the management was aware that she would be attending the rental unit to retrieve the tent trailer, and that when they arrived to move the tent trailer it had already been towed. She further writes that the Tenant did not accept any money from her as he was "embarrassed", but that she paid a "significant tow fee".

The Tenant also requested an Order restricting the Landlord's right to enter the rental unit pursuant to section 29 of the *Residential Tenancy Act*. In support of this claim he testified as follows.

The Tenant stated that he never used to mind R.M. coming by for an "update" as he got along with R.M. However, the Tenant stated that on one occasion he received a phone call from his son, C., who said "the guy is in here, he's walking around" and that the interaction between R.M. and his son not go well and was a "bad one". He did not provide any further details as to this incident.

The Tenant further stated that he was informed by another renter that Y.B. went into his rental unit without the Tenant's permission. The Tenant claimed that Y.B. went into his rental unit and went through his drawers. He claimed that he was aware that she did so as he used to put the

latches the same way to prevent his son from taking change and when he returned he could see that the latches were not in the position he had left them.

Y.B. testified on behalf of the Landlord.

Written submissions provided by the Landlord indicate that the Landlord first became aware of the Tenant's tent trailer on July 13, 2015 when the Tenant called the Landlord and asked about parking the tent trailer on the property.

Y.B. stated that the Tenant originally spoke with J.C. about the tent trailer on July 13, 2015 and J.C. informed the Tenant that he had until July 14, 2015 to have the tent trailer removed.

Y.B. stated that J.C. then emailed everyone involved, including the caretaker, D.A. about the tent trailer.

Introduced in evidence was an email from S.D. wherein he informs Y.B. that he told the Tenant that the tent trailer would be towed on July 15, 2015. S.D. further writes that he was aware the Tenant had sold the tent trailer to a person from a city approximately 4 hours from the city in which the rental unit is located and that she would be arriving that day to purchase the tent trailer.

Y.B. confirmed that despite being aware that the Tenant had agreed to sell the tent trailer and that it would be retrieved on that date, that the Landlord had the tent trailer towed.

Y.B. stated that they did not believe the Tenant that he had sold the tent trailer; rather, they believed he was simply stalling.

In response to the Tenant's allegations that the Landlord's staff have entered his rental unit without his knowledge or consent, Y.B. testified as follows. Y.B. stated that she went to the annual inspection with the maintenance crew. She confirmed that she went to make sure that the Tenant's son was living with him, because his ability to reside in the rental unit is dependent on his son living with him as this is a subsidized unit. Y.B. confirmed that she saw enough of the Tenant's son's items to confirm he lived there. She stated that she did not enter the rental unit after that time, and was there when the maintenance crew opened and locked the rental unit. Y.B. stated that she has done this job "for some time" and would "absolutely not breach a tenant's privacy" as alleged. She further stated that she is aware of the law in this regard and at no time did she enter his unit after the annual inspection.

R.M. also testified on behalf of the Landlord. R.M. stated that he went to the property on September 13, 2016 and saw the front door was open. He stated that the son, C., was in his room and R.M. knocked on the door. R.M. testified that C. said "come in" and R.M. said he did not do so and asked C. to come to the door. R.M. further stated that he told C. what he needed in terms of documents for the previous tax year. R.M. further stated that C. seemed to

understand what R.M. needed, it was a pleasant conversation and R.M. left. R.M. testified that he has not, at any time, entered the rental unit without the Tenant's permission.

R.M. further testified that he was not aware of the situation with respect to the tent trailer as he was out of town. Despite this, R.M. noted that the Tenant claimed the towing bill was \$498.00 which suggests the towing bill was for a significant amount of storage, which further suggests that the people who were supposed to come and buy it that day is not true. R.M. also noted that there is a sign in the parking area which informs the Tenant as to the phone number for the towing company such that the Tenant's claim that the tent trailer was towed to an unknown location was false. R.M. also testified that there is a bylaw which mandates that the towing company must tow the item to the community in which it was first located, such that it likely was not towed far away as alleged by the Tenant. In all the circumstances R.M. submitted that the Tenant's claim that he had a buyer that day was not true.

In reply the Tenant stated that he did not understand why the Landlord would tow his tent trailer when they knew that he had an agreement to sell it.

Analysis

I will first deal with the Tenant's claim for compensation for losses he alleges to have incurred due to the Landlord towing his tent trailer.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Tenant failed to submit any photos of the tent trailer. Similarly, he failed to submit any evidence which would support a finding as to its value. He testified that he believed it was worth more than \$3,000.00 yet claimed only \$1,000.00 on his Application for Dispute Resolution.

The Tenant submitted that he had received numerous notices to end tenancy, and that he feared he would be evicted. He stated that he purchased the tent trailer to ensure that in the event he and his son were evicted, they had accommodation. The Tenant says that he had discussion with the resident caretaker who confirmed he could park the tent trailer at the rental property for a few days while it was being sold. The Tenant claims that on the date set for the purchaser to buy the tent trailer (which he did not specify), it was no longer parked in the visitor parking area. He claimed that despite his agreement with the resident caretaker, the Landlord's Manager of Tenant Relations, Y.B., had the tent trailer towed to an unknown tow yard.

The resident caretaker did not testify at the hearing.

The Tenant submitted an undated letter from the purchaser who confirmed that she paid the towing charge. She does not indicate the date she attended the rental property to purchase the tent trailer, nor does she disclose the agreed upon price.

The Tenant confirms that he did not accept any payment for the tent trailer as the purchaser paid the tow charge of \$498.00. No supporting evidence of this towing charge or payment was provided in evidence.

Y.B. stated that on July 13, 2015 the Tenant sought permission to store his tent trailer on the rental property in the visitor parking. She claims that he was informed this was not acceptable, but he was given until 6:00 p.m., the next day (July 14, 2015) to have it removed. She stated that this deadline passed and on July 15, 2016 the Tenant was again informed that it would be towed from the visitor parking on the afternoon of July 15, 2016 if it was not removed before then by the Tenant. She confirmed that it was in fact towed when that second deadline passed.

R.M. noted that the Tenant failed to provide a copy of the invoice from the towing yard, and as such it is not possible to determine how long the tent trailer was stored. R.M. submitted that it is likely, based on the amount the Tenant claims was charged, that the tent trailer was at the towing yard for a significant period of time.

As indicated previously the Tenant bears the burden of proving his monetary claim on a balance of probabilities. Based on the evidence and testimony before me, and on a balance of probabilities, I find the Tenant has failed to prove his claim.

I am unable to find that the Landlord violated the *Residential Tenancy Act*, or the tenancy agreement by removing the Tenant's tent trailer from the visitor parking.

The Landlord has the right to regulate the types of vehicles that are permitted to park in the private visitor parking area of a rental building complex; similarly, the Landlord has the right to designate maximum times for such visitor parking. In the case before me, I accept the Landlord's evidence that on July 13, 2015 the Tenant was granted permission to park the tent trailer for *one* day and that he was informed he needed to move the tent trailer by July 14, 2015 otherwise the tent trailer would be towed. I further accept that the Tenant failed to move the tent trailer by that deadline.

Additionally, I am unable to determine *when* the purchaser attended to retrieve the tent trailer. The Tenant insists it was on a "date agreeable to the resident caretaker"; yet, that date was not disclosed by the Tenant. Further, in the unsigned letter from the purchaser, she also fails to disclose *when* she retrieved the tent trailer. It is possible, based on the amount the Tenant alleges was charged for towing and storage of the tent trailer, that the tent trailer remained at the tow yard for some time. Should that be the case, it would support a finding that the purchaser did not attend the rental unit on the "date agreeable to the resident caretaker", and that the tent trailer would have been towed in any case.

Accordingly, I am unable to find that the alleged loss occurred due to the actions or neglect of the Landlord.

Further, aside from his testimony, the Tenant failed to provide any evidence to support a finding as to the value of the tent trailer; as such, even in the event I had found the Landlord violated the *Act*, or the tenancy agreement, I have been provided insufficient evidence of the amount required to compensate the Tenant.

Finally, the Tenant and the purchaser admitted he did not accept payment for the tent trailer. In doing so, he failed to mitigate any alleged loss.

For the above reasons, I dismiss his claim for compensation.

The Tenant claims the Landlord's employees, Y.B. and R.M., entered his rental unit on two occasions without his knowledge or consent. Y.B. and R.M. deny these allegations. The Tenant bears the burden of proving that these unauthorized entries occurred. Based on the evidence before me, I find the Tenant has failed to prove the Landlord's employees entered his rental unit without his knowledge or consent and I therefore decline his request that I make an Order restricting the Landlord's right to enter the rental unit.

Conclusion

The Tenant's claim is dismissed. The Tenant failed to prove his monetary claim for compensation relating to his tent trailer. Similarly, the Tenant failed to prove the Landlord entered his rental unit contrary to section 29 of the *Residential Tenancy Act*.

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: November 25, 2016

Residential Tenancy Branch