



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TWENTY ONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On June 22, 2016 the Tenant filed an Application for Dispute Resolution, in which he applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and 2 pages of evidence he submitted with the Application were served to the Landlord's legal counsel, via registered mail, on June 22, 2016. Legal Counsel for the Landlord stated that these documents were received at her office, although she does not know when they were received. On the basis of the undisputed evidence I find that these documents were received by the Landlord and the two pages were accepted as evidence for these proceedings.

On June 28, 2016 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. During the hearing Legal Counsel for the Landlord stated that the Landlord wishes to withdraw the claim for unpaid rent.

The Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were served to the Tenant, via registered mail, although he cannot recall the date of service. The Tenant acknowledged receiving these documents sometime in the summer of 2016, although he cannot recall the date of receipt. On the basis of the undisputed evidence I find that these documents were received by the Tenant.

On November 21, 2016 the Landlord submitted 12 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on November 21, 2016. The Tenant stated that he received this evidence on November 21, 2016 but has not had sufficient time to consider it.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence an applicant intends to rely upon at the hearing must be received by the respondent not less than 14 days before the hearing. Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence a respondent intends to rely upon at the hearing must be received by the applicant not less than 7 days before the hearing.

Regardless of whether the Landlord's evidence was served as evidence in support of the Landlord's Application for Dispute Resolution or in response to the Tenant's Application for Dispute Resolution, I find that it was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, as it was received by the Tenant 2 days before the hearing.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure Evidence stipulates that evidence not provided to the other party in accordance with the Rules of Procedure 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. I find that all of the evidence submitted by the Landlord was, or could have been with reasonable diligence, submitted within the timelines establish by the Residential Tenancy Branch Rules of Procedure.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure Evidence further stipulates that I may accept "late evidence" if accepting the evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

During the hearing a statement from the storage company that had been submitted as evidence was discussed. After a lengthy discussion the Tenant agreed that this statement could be accepted in evidence in spite of his assertion that he had not had sufficient time to consider the document. Upon reflection I have concluded that this document, nor any of the documents submitted in evidence by the Landlord, should be accepted as evidence for these proceedings. In my view it was the Tenant did not fully understand what he was agreeing to and I find that he only agreed to accept the evidence in an effort to avoid an adjournment.

In determining that the Landlord's evidence should not be accepted I was heavily influenced by the fact the Tenant only had two days to consider this evidence, which I find to be insufficient.

I do not find that refusing to accept the Landlord's evidence breaches the principles of natural justice. I find that the Landlord had ample time to serve this evidence in a timelier manner, given that these Applications were filed in June of 2016.

I find that any disadvantage to the Landlord was the direct result of the Landlord failing to comply with the timelines established by the Rules of Procedure. Conversely I find that an adjournment would be a significant disadvantage to the Tenant, who has been waiting several months for this hearing.

The parties were given the opportunity to give relevant oral evidence, to ask relevant questions, and to make relevant submissions. I note that on several occasions during the hearing the Tenant was cautioned about speaking out of turn and/or interrupting others.

Preliminary Matter

With the consent of both parties the Tenant's Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to compensation for storing personal property?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to compensation for lost/damaged property?

Is the Tenant entitled to compensation for being served with a Two Month Notice to End Tenancy?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant was living in the rental unit prior to the Landlord purchasing the property on March 01, 2013;
- a security deposit of \$485.00 was paid to the original Landlord;
- in December of 2014 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which required the Tenant to vacate the unit by February 28, 2015; and
- the Tenant did not dispute the Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant stated that the end of the tenancy his rent was \$970.00 per month. The Landlord stated that he is not certain how much rent the Tenant agreed to pay but he "guessed" it was \$995.00.

The Tenant is seeking to recover his "last month's rent". When asked if the Tenant was compensated for one free month's rent as a result of being served with the Two Month Notice to End Tenancy Legal Counsel for the Landlord stated that since most of the

Tenant's rent was paid by a third party the Landlord would have been obligated to return any rent paid for the last month to the third party. When asked directly, both parties acknowledged that the Tenant was not given "the equivalent" of one month's free rent, either by not paying rent for the last month or by receiving a cash payment that equals the amount of rent due.

Legal Counsel for the Landlord stated that the Landlord understands that:

- on February 28, 2015 the police attended the residential complex in response to squatters in an unrelated rental unit;
- the police went to the Tenant's rental unit in error;
- the Tenant was arrested for assaulting a police officer;
- the police removed the Tenant from the rental unit; and
- the police told the Tenant not to return to the rental unit.

The Landlord stated that:

- after the Tenant left the rental unit the Landlord delivered some personal property to him at the shelter;
- the Tenant did not tell him what to do with the property that was left in the rental unit;
- the Tenant was frequently verbally aggressive when they discussed the tenancy and the Tenant's property;
- on March 21, 2015 he hired two people to pack the Tenant's personal belongings;
- all of the items in the rental unit were packed and stored, with the exception of perishables and one chair that did not fit into the storage container;
- there were no items on the Tenant's patio when his property was packed and stored;
- the Tenant's patio is on the ground floor so it is possible any property he stored there had been stolen;
- there were storage lockers in the residential complex;
- the Tenant never informed the Landlord he had property in a storage locker;
- the Tenant was the last tenant to move out of the residential complex;
- there was nothing of value in any of the storage lockers when the Tenant's property was packed;
- none of the items listed by the Tenant as missing were left in the rental unit or in a storage locker after the packing was complete;
- he does not recall if all of the items listed by the Tenant were in the rental unit at the end of the tenancy;
- the chair that did not fit into the storage container was returned to an outreach worker who was acting on behalf of the Tenant in July of 2016;
- the Tenant's personal belongings were stored at a commercial storage site;
- the Landlord paid for the cost of storing the property for almost one year;
- he was eventually able to make contact with the Tenant's brother, who agreed to assume control over the property that had been placed in storage; and

- the residential complex was demolished in May of 2015.

The Tenant stated that:

- on February 28, 2015 the police came to his rental unit and told him to leave;
- the police threw him to the floor and arrested him;
- the police drove him to a shelter;
- the police told him not to return to the rental unit;
- he has never returned to the rental unit because the police told him not to;
- after he was removed from the rental unit the Landlord delivered some personal property to him at the shelter;
- he did not make any arrangements to have his personal property moved out of the rental unit;
- he never told the Landlord what to do with the property that was left in the rental unit;
- he understands his brother agreed to pay for the cost of storing the Tenant's property once the Landlord told his brother that his property would be discarded;
- he moved his property from the storage unit to his residence after he moved onto a new home in May of 2016;
- when he moved his property from the storage unit he notice several items of his personal property were missing;
- he submitted a list of property that was missing from his rental unit;
- some of the property on the list he submitted was stored on his patio;
- some of the property on the list he submitted was stored in his storage locker;
- when he moved his property from the storage unit he noticed that some items were damaged to due to poor packing; and
- the values he has assigned to his missing/damaged property is his estimate of the value of the property when it was new.

The Tenant is seeking compensation for the property he alleges was missing from the rental unit.

The Tenant stated that on May 01, 2016 he mailed his forwarding address to the office of Legal Counsel for the Landlord.

Legal Counsel for the Landlord stated that:

- neither she, nor the Landlord, received the forwarding address the Tenant contends was mailed on May 01, 2016;
- a forwarding address for the Tenant was not received until the Tenant served the Landlord with his Application for Dispute Resolution;
- the Landlord does not wish to cause any undue hardship to the Tenant and is, therefore, no longer seeking to recover the full costs of moving and storing the Tenant's property;

- she believes the Landlord is entitled to retain the Tenant's security deposit because he did not provide a forwarding address within one year of the end of the tenancy;
- the Landlord is only seeking to recover the costs of moving and storing property in an amount that entitles the Landlord to retain the security deposit in the event it is determined that the Landlord is not entitled to retain the deposit due to the delay in providing the forwarding address;
- the property moved from the Tenant's rental unit was filthy and/or in a state of disrepair;
- the property moved from the Tenant's rental unit was in such poor condition it was worthless.

Analysis

I favour the testimony of the Tenant, who declared that the monthly rent was \$970.00, over the testimony of the Landlord who "guessed" that the monthly rent was \$995.00. I favoured the testimony of the Tenant because he was certain of the amount while the Landlord readily acknowledged he was not certain of the amount.

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which required him to vacate the rental unit by February 28, 2015, although he did not vacate the unit on the basis of that Notice.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end tenancy under section 49 of the *Act* is entitled to receive the equivalent of one month's rent. On the basis of the undisputed evidence I find that the Tenant has not received the equivalent on one month's rent. As the Tenant has not yet received this amount, I find that he is entitled to compensation of \$970.00 pursuant to section 51(1) of the *Act*.

On the basis of the undisputed evidence I find that on February 28, 2015 the Tenant unwillingly vacated the rental unit at the direction of the police; that he did not return to the rental unit after February 28, 2015; and that he did not arrange to have all of his property removed from the unit after February 28, 2015.

I find that this tenancy ended on February 28, 2015, pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act)* when the Tenant abandoned the rental unit.

Section 39 of the *Act* stipulates that if a tenant does not give a landlord a forwarding address, in writing, within one year after the end of the tenancy, the landlord may keep the deposit and the tenant has extinguished the right to the return of the deposit.

Even if I accepted the Tenant's testimony that he mailed his forwarding address to Legal Counsel for the Landlord on May 01, 2016 I would conclude that the forwarding

address was not provided within one year of the tenancy ending on February 28, 2015. I therefore find that the Landlord is entitled to retain the Tenant's security deposit pursuant to section 39 of the *Act*.

As the Landlord is only seeking to recover the costs of moving and storing property in an amount that entitles the Landlord to retain the security deposit in the event it is determined that the Landlord is not entitled to retain the security deposit pursuant to section 39 of the *Act*, and I have concluded that the Landlord is entitled to retain the security deposit pursuant to section 39 of the *Act*, I find that the Landlord has abandoned the claim to recover moving and storage costs.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In regards to the claim for missing property, the burden of proving that property was left behind by the Landlord when the rental unit was emptied or that it was lost during the moving process rests with the Tenant. I find that the Tenant has failed to meet this burden of proof.

In determining that the Tenant has submitted insufficient evidence to establish that the Landlord lost or left behind some of the Tenant's personal property when the rental unit was emptied, I was heavily influenced by the absence of any evidence that corroborates the Tenant's testimony that those items were in the unit at the end of the tenancy or that refutes the Landlord's testimony that all items in the unit were placed in storage, with the exception of perishables and one chair.

In determining that the Tenant has submitted insufficient evidence to establish that the Landlord lost or left behind some of the Tenant's personal property when the rental unit was emptied, I was further influenced by the absence of any evidence that corroborates the Tenant's testimony that there were items on his patio at the end of the tenancy or that refutes the Landlord's testimony that there were no items on the patio at the end of the tenancy.

In determining that the Tenant has submitted insufficient evidence to establish that the Landlord lost or left behind some of the Tenant's personal property when the rental unit was emptied, I was further influenced by the absence of any evidence that corroborates the Tenant's testimony that he had property in a storage locker or that refutes the Landlord's testimony that there were no items on value left in storage lockers.

As the Tenant has failed to establish that the Landlord lost his personal possessions, I dismiss the Tenant's claim for compensation for the missing items he listed.

Section 7(2) of the *Act* stipulates that a tenant who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. Even if I accepted the Tenant's testimony that a few of his items were damaged during the move I would find that he is not entitled to compensation for that damage because he did not mitigate his losses pursuant as is required by section 7(2) of the *Act*. In reaching this conclusion I was heavily influenced by the fact the Tenant made no effort to have his property moved from the rental unit. Had the Tenant moved his own property or made arrangements for a third party to move his property, it is possible his property would not have been damaged.

As the Tenant did not mitigate his losses by moving his own property, I dismiss the Tenant's application for compensation for damage to his property. In adjudicating the claim for damage I was influenced by the fact that the damage alleged by the Tenant is relatively minor. I find that the damage may have occurred even if the Tenant moved his own property and stored it for this length of time. In the absence of evidence that shows the Landlord handled the Tenant's property in a reckless or irresponsible manner, I find that the Landlord is not obligated to compensation the Tenant for minor damage.

In adjudicating the Tenant's claim for lost/damaged property I was influenced, to some degree, by the absence of evidence that establishes the value of his property. I specifically note that the Tenant has not submitted any evidence that corroborates his estimated values or that refutes the Landlord's submission that the property was in such poor condition that it was worthless.

Section 25(2) of the *Act* stipulates that a landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that the property has a total market value of less than \$500.00, the cost of removing, storing and selling the property would be more than the proceeds of its sale, or the storage of the property would be unsanitary or unsafe. As the Tenant has failed to establish that the value of his property is greater than \$500.00, I cannot conclude that the Landlord was obligated to store the Tenant's property.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim of \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution.

The Tenant has established a monetary claim of \$970.00 in compensation pursuant to section 51(1) of the *Act*.

After offsetting the two claims I grant the Tenant a monetary Order for \$870.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced 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: November 24, 2016

Residential Tenancy Branch