



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC OLC LRE OPT RR PSF

Introduction

Both parties attended the hearing, the tenant being represented by his agent. The female landlord said her surname was the same as the male landlords. The tenant's agent had no objection to amending the application to make this addition/change so the female landlord's name is amended on the Decision. I note the previous decision used the correct name of the female landlord. The parties confirmed the application was served personally but the amendment filed December 20, 2016 was not served on the landlord. The tenant said the timing was a problem because of the time of receipt of the previous Decision. I find the original application was legally served for the purposes of this hearing but the amendment was not served. I therefore dismiss the amendment for lack of service. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain a return of his personal property;
- b) That the landlord obey the provisions of the Act and allow the tenant access to his suite pursuant to section 30;
- c) That the landlord give them keys, restore facilities and obey the Act;
- d) To obtain an Order of Possession for the tenant.
- e) For compensation for losses suffered due to being locked out of his unit

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to an Order of Possession and to compensation for losses due to being locked out of his unit?

Background and Evidence

Both parties, the tenant by an agent, attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 1, 2016 on a fixed term expiring March 31, 2017, rent was \$2100 a month and a security deposit of \$1050 was paid.

Both parties agreed that on or about November 4, 2016, the Police executed a search warrant on the unit. They broke the lock and discovered some grow-op paraphernalia in the unit. The landlord said he talked to the Strata and were told they had changed the electronic fobs giving access to the building and also changed the door lock as they were concerned for the safety and physical well being of other occupants as the tenant had been arrested. On November 7, 2016, the landlord said they again spoke to the City and the Police. The City had put an order on the suite door that the suite was not to be occupied due to electrical safety concerns and mould found in the unit.

Considerable remediation and inspection work will have to be done before occupancy will be permitted again. The landlord said they had made multiple trips to allow the tenant to retrieve his belongings. The agent confirmed that the tenant had been able to retrieve all his belongings as of yesterday and the landlord had permission to dispose of anything remaining. Both parties confirmed that \$1850 rent had been paid for November but not the final \$250. The security deposit is still in trust with the landlord and I informed the parties of the procedure necessary to deal with the deposit pursuant to section 38 of the Act.

The original claim of the tenant was for \$3500 compensation for the losses suffered due to being locked out on November 4, 2016. The amended claim changed the amount to \$7666.00 and specified costs of accommodation, emergency clothing and hygiene supplies. The agent contended that the landlord should have taken proper steps to notify them so they would not have incurred costs of emergency housing and clothing. The landlord said they live in another municipality and all the actions were taken by Police, the City and the Strata which were trying to protect the safety and well being of other occupants in the strata. They said they did all they could in helping the tenant retrieve his belongings.

Included with the evidence are copies of the previous Decision and a letter from the City noting the "Not Safe to Occupy" Notice was put on the unit door on November 4, 2016 and stating a long list of remediation work to be performed. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As explained to the parties in the hearing, I have no jurisdiction to grant an Order of Possession or an Order or the return of keys in favour of the tenant as the landlord was granted an Order of Possession in the previous hearing. I dismiss this portion of the tenant's claim.

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.

The onus is on the tenant to prove that the landlord violated the Act or tenancy agreement and that the landlord's act or neglect caused them to suffer losses. Although I find the evidence shows the tenant suffered losses, I find insufficient evidence to prove that these losses were due to any act or neglect of the landlord. I find Police and strata action and the City order caused the tenant to be locked out. The actions of these third parties, I find, were due to the operation of an illegal grow-op in the unit for which the tenant is responsible. I find the tenant's actions, not the landlord's, caused the tenant's losses. I find the landlord made efforts to mitigate the tenant's losses by travelling several times from another municipality to give the tenant access to retrieve belongings. I dismiss the application of the tenant.

Conclusion

I dismiss the application of the tenant as I find his losses were due to official actions due to an illegal grow-op in his unit and not due to any act or neglect of the landlord. I find him not entitled to recover the filing fee due to his lack of success.

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: December 22, 2016

Residential Tenancy Branch

