



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WATERFORD DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession of the rental unit pursuant to section 54;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed evidence. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the Notice of Hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 22, 2017. The tenant submitted a copy of the Canada Post Customer Receipt and Tracking label as confirmation of service on September 22, 2017. The tenant clarified that the package was returned by Canada Post as "refused" and has provided a copy of the returned envelope. I accept the undisputed evidence of the tenant and find that the landlord was sufficiently served as per sections 88 and 89 of the Act. Although the landlords "refused" the package, I find that the landlord is deemed served as per section 90 of the Act 5 days later on September 27, 2017.

The tenant clarified that the request for an order for the landlord to comply with the Act, Regulations of Tenancy Agreement was made in duplication of his request for an order of possession. As such, this portion of the tenant's application was cancelled and need no further action.

The tenant also confirmed that an amendment to the application was filed on October 5, 2017 which was served to the landlord via Canada Post Registered Mail in which he seeks a monetary claim of \$2,000.00 as outlined in the submitted monetary worksheet. I accept the undisputed affirmed testimony of the tenant that the landlord was served with the amendment to the application on October 5, 2017 via Canada Post Registered Mail and find that the landlord has been properly served as per sections 88 and 89 of the Act.

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 and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2017 on a fixed term tenancy until August 31, 2018 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 24, 2017. The monthly rent is \$1,100.00 payable on the 1st day of each month. A security deposit of \$550.00 was paid.

The tenant seeks an order of possession of the rental unit and a monetary claim of \$2,000.00 which consists of:

| | |
|----------|--|
| \$600.00 | Shelter |
| \$97.41 | New Work Boots |
| \$900.00 | Loss of Work (wages for 3 days at \$100/Day) |
| \$200.00 | Advocate's Fee |
| \$202.59 | Transport (Taxi Fees, to meet Landlord) |

The tenant provided undisputed testimony that a signed tenancy agreement was made with the landlord to begin on September 1, 2017 after a security deposit of \$550.00 was paid on August 23, 2017. The tenant claims that the landlord provided keys to the rental unit and after the tenant had moved his belongings in, the landlord changed the locks and refused access to the tenant without any notice. The tenant claims that as a result he has had to find alternate accommodations and has suffered the loss of rent paid for shelter, buying new work boots as the landlord refuses him access to his belongings and has suffered the loss of work for 3 days at \$100/day, payment of an advocate's fee to prepare for the hearing and the cost of transportation in meeting the landlord to resolve the issues. The tenant stated that taxi services were used in meeting the landlord to communicate over these issues failed to attend after setting the appointment with him.

In support of this claim, the tenant has provided a copy of:

A handwritten receipt for \$600.00 dated Sept. 3 to Oct. 1 for room and board

A receipt dated August 23, 2017 for the purchase of new work boots

Analysis

Section 54 of the Act states in part, that an application may be made by the tenant for an order of possession if a tenancy agreement has been made with the landlord.

In this case, the tenant has provided undisputed evidence that a tenancy agreement was entered into with the landlord on September 1, 2017 as shown by the submitted copy of the signed tenancy agreement dated August 24, 2017. The tenant provided undisputed evidence that the landlord without notice changed the locks of the rental unit and denied him entry or access to his belongings in the rental unit. The tenant claims that the rental unit is still vacant with his belongings and that all attempts to communicate with the landlord have been ignored.

I accept the undisputed evidence of the tenant and find that the tenant has provided sufficient evidence that a tenancy agreement was entered into with the landlord and that the landlord has denied access to the rental unit by changing the locks without notice. I also accept the undisputed evidence that the rental unit is still vacant. As such, I grant the tenant an order of possession.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant claims that as of a result of the landlord's actions the tenant had to secure alternate shelter for \$600.00 for the period September 3 to October 1 as shown by the submitted handwritten receipt. The tenant also incurred a further expense to purchase new work boots of \$97.41 as result of the landlord refusing access to his personal belongings. I accept the undisputed evidence of the tenant on these two items of claim and grant the tenant a monetary order for \$697.41.

I find on the tenant's remaining 3 items of claim have failed.

Loss of Work (wages for 3 days at \$100/Day)

\$200.00

Advocate's Fee

\$202.59

Transport (Taxi Fees, to meet Landlord)

Although the tenant has provided undisputed testimony that he suffered a loss of work for 3 days, paid an advocate's fee and the loss of taxi fees due to the landlord's actions, the tenant has failed to provide sufficient evidence that any of these expenses were incurred. Namely receipts for each taxi service, a fee paid for advocate's services of proof that the tenant suffered a loss of work due to the actions or neglect of the landlord.

The tenant having been significantly successful in his application for dispute is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted an order of possession.

The tenant is granted a monetary order for \$797.41.

These orders must be served upon the landlord. Should the landlord fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia.

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: October 19, 2017

Residential Tenancy Branch