



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$2043
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 1, 2017.

With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term tenancy that provided that the tenancy would begin on November 1, 2016 and end on October 31, 2017. The rent was \$1650 per month payable in advance on the first day each month. The tenant(s) paid a security deposit of \$825.

The landlord served a one month Notice to End Tenancy on the Tenant and on January 25, 2017 the landlord obtained an Order of Possession that provided that the Tenant was to vacate the rental unit on January 31, 2017.

The agent for the tenant gave the following testimony:

- The agent is the tenant's stepson. In late January 2017 the agent and his wife were notified by the tenant that he had an eviction notice that required that he vacate by the end of January. The agent and his wife live out of town. They arranged to take time off work and travelled to Richmond to assist the tenant find alternative accommodation and to assist with the move.
- They were unable to arrange for alternative accommodation and on January 30, 2017 they had to return to their home town for work. They had arranged for movers to attend to take the tenant's belongings to storage for February 1, 2017. The agent testified the landlord agreed to this.
- However, on January 31, 2017 the landlord started harassing the agent and his wife by e-mail, phone and texting including the following:
 - Demanding to know when the movers were coming
 - Stating that the deadline was January 31, 2017 at 1:30 p.m.
 - Advising he had call the police
 - Stating there would be consequences for the failure to move out.
 - This continued on February 1, 2017 when the landlord demanded the tenants pay the rent for February as they had missed the deadline.
 - At 10:11 he told the agent and his wife that if they don't pay then that would force the landlord to report them and "Don't make matters worse.
 - Twenty five minutes later he confirmed he had an Order of Possession and that he could change the locks and that he would claim damages if things got worse.
 - The movers arrived in the late afternoon. At 4:21 p.m. the movers advised the agent that the landlord and the manager refused to allow them to move the Tenant's belongings.
 - The agent for the Tenant gave evidence that they were under extreme duress and feared the landlord would hold on to the tenant's belongings. As a result he e-transferred the rent to the landlord at 4:42 p.m.
- On February 4, 2017 movers arrived to remove the tenant's belongings. An agent acted on behalf of the tenant who participated in a Condition Inspection with the landlord. The deposit was returned subject to an agreed deduction.
- The Tenants A because they were afraid the landlord would at paid the rent for February at 1:42 p.m. on February 1, 2017.
- The tenant claims the sum of \$278 for the cost of the movers that were sent away on February 1, 2017 and the rent paid for February in the sum of \$1765,

The landlord disputes much of the evidence given by the agent for the tenant including the following:

- The agent for the Tenant paid the rent for February because they failed to move out in accordance with the Order of Possession on January 31, 2017.
- There was no sign the tenant was going to move out until January 30, 2017. On that date he received an e-mail from the tenant's mother.
- He had potential tenants lined up for February but he could not commit to those tenants as it did not appear that the tenant was leaving. The tenant left the apartment and furniture in a bad condition due to the smell of heavy smoke inside the unit, the medicine odour stock on walls and furniture. It took the landlord 1 ½ month to clean the apartment and dissipate the smell.
- On January 31, 2017 he received an e-mail from the tenant's mother that movers would be coming on February 1, 2017.
- On February 1, 2017 two significant events occurred:
 - The tenant called his cell phone at 8:00 a.m. and advised that he was not moving out.
 - When he talked to the tenant's mother she advised that she was not the tenant and that it was not her problem.
- As a result he (the landlord) contacted his lawyer and talked to the police to determine what options he had.
- He then contacted the tenant's mother and demanded she pay the rent for February as he feared he would continue to suffer financial losses.
- He received a phone call from the tenant's agent before noon on February 1, 2017. During the phone call the agent told the landlord that he would pay the rent for February. The landlord produced a copy of the e-mail transfer indicating the rent was paid at 1:42 p.m.
- The first time the agent demanded the return of the money was in an email on April 18, 2017.
- The landlord testified the movers refused to move the tenant's belongings in the late afternoon of February 1, 2017 because the tenant had failed to pack those belongings. He testified he was there to open the door for the movers and to advise them which pieces of furniture belonged to the tenant and which belonged to the landlord.

Analysis

With regard to each of the tenant's claims I find as follows:

- a. I dismissed the tenant's claim of \$278 for the cost of the movers who attended the premises on February 1, 2017. The agent for the Tenant failed to present sufficient evidence to establish that the landlord prevented the movers from moving the tenant's belongings. I accept the evidence of the landlord and the manager that the movers refused to move the belongings because the tenant failed to pack the belongings.

- b. The tenant claims \$1765 to recover rent money paid for the month of February. The tenant submits that he did not have the use of the rental unit during that period and as a result is entitled to reimbursement of the rent paid.

After carefully considering all of the evidence I determined there is no basis for an order that the landlord reimburse this sum to the Tenant. The rent was paid by the agent for the Tenant at 1:42 p.m. on February 1, 2017 and not after the movers had attended as testified by the agent for the Tenant. The events that occurred with respect to the movers who attended later that day are not relevant as the rent had already been paid.

The landlord demanded that the tenant's mother pay the rent for February. While there was heated words and demands between the parties I do not accept the submission of the agent for the tenant that the events leading up to the payment of the rent amount to duress or economic duress as defined by the law.. The definition of economic duress and enumeration of factors a court should consider in the face of such a claim is found in the decision of the Judicial Committee of the Privy Council in ***Pao On v. Lau Yiu***, [1979] 3 All E.R. 65 at 78:

Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. ... [I]n a contractual situation commercial pressure is not enough. There must be present some factor ... which could in law be regarded as a coercion of [the] will [of the person alleging duress] so as to vitiate his [or her] consent... . In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether, at the time he [or she] was allegedly coerced into making the contract, he [or she] did or did not have an alternative course open to him [or her] such as an adequate legal remedy; whether he [or she] was independently advised; and whether after entering the contract he [or she] took steps to avoid it. All these matters are ... relevant in determining whether [the person alleging duress] acted voluntarily or not."

In this case there was not coercion of the will. The agent for the tenant and the tenant did not protest at the time the rent was paid. The agent for the tenant and the tenant had alternatives which would lead to an adequate remedy. They could have contacted their solicitor or an Information Officer at the Residential Tenancy Branch. Further, the agent for the tenant failed to take timely steps after the belongings were removed and this acted to the prejudice of the landlord.

While the landlord may not have had the right to claim rent for the period of time in February after the tenant vacated, the landlord had the right to claim damages for loss of rent for the unexpired period of the fixed term subject to the landlord's obligation to mitigate his loss and his obligation to give the Tenant notice that he

intend to do so.. Further, I accept the testimony of the landlord that he was not able to re-rent the rental unit until the middle of March because of the tenant's failure to move in a timely manner and the tenant's failure to properly clean the rental unit when he left.

Conclusion:

As a result I dismissed the tenant's claim for a monetary order and to recover the cost of the filing fee.

This decision is final and binding on the parties.

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 29, 2017

Residential Tenancy Branch