



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSWAY HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNR, RPP

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act")

On September 8, 2017, the Tenant filed an application seeking the return of personal property and a monetary order for money owed or compensation under the Act, Regulation or tenancy agreement.

On September 28, 2017, the Landlord filed an application requesting a monetary order for unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The hearing was conducted by conference call and both parties participated in the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Matters

After further deliberation following the initial hearing, it was necessary to reconvene the hearing.

The Tenant's application does not include the name of Mr. L.V. who stated he was the owner of the hotel at the time of the tenancy. The Tenant clarified that his claim is against Mr. L.V. who is the former Landlord of the hotel. The Tenant asked to amend his application to include the name of Mr. L.V.

Mr. L.V. submitted an application on September 28, 2017, under the name of the hotel. Mr. L.V. confirmed that he is not applying on behalf of the current owner of the hotel. He confirmed at the hearing that he does not expect the current owner of the hotel to be responsible for damages due to tenancy issues that took place prior to the sale of the hotel. He submitted that he was a Landlord for 487257 BC LTD. I amend the Landlord's name in the application to be 487257 BC LTD.

The Tenant provided 12 pages of documentary evidence to the RTB in support of his claims. He testified that he sent his evidence to the Landlord using registered mail on September 11, 2017. He testified that the evidence was refused and returned to him.

The Landlord testified that he has no knowledge of receiving the Tenant's evidence.

I find that the Tenant attempted to serve his documents to the new owner of the hotel rather than the previous Landlord. I find that Mr. L.V. was not properly served with the Tenant's documentary evidence.

The Tenant's documentary evidence consists of three letters he wrote to the Landlord and a photograph of the hotel. There is no documentary evidence establishing payments of rent, or establishing the value of the Tenants loss of personal property. It would be unfair to consider the three letters that were not disclosed to Mr. L.V. which he did not have an opportunity to respond to. The Tenant's documentary evidence of the three letters will not be considered; however, the Tenant had an opportunity to provide direct testimony.

The Tenant confirmed that he received the Landlord's documentary evidence in the mail.

Issues to be Decided

- Is the Tenant entitled to the return of personal property or compensation for the loss of personal property?
- Is the Landlord entitled to compensation for unpaid rent; damage; and costs to clean the rental unit?

Background and Evidence

The parties testified that the tenancy began on December 1, 2016, as a month to month tenancy. The Tenant was to pay rent in the amount of \$200.00, by the first day of each month. There is no written tenancy agreement provided by either party. The rental unit is a single occupancy room in a hotel.

The Tenant testified that his tenancy ended on July 29, 2017, when the Landlord locked him out of his room.

Mr. L.V. testified that the sale of the hotel closed two days later on August 1, 2017.

Tenant's Claims

The Tenant testified that on July 29, 2017, he attended the hotel and was informed that he was no longer welcome on the property. He stated that he went upstairs and found a letter on his door that said the locks were changed and to ask staff to open the door. He testified that the letter informed him to remove his possessions by July 31, 2017.

The Tenant testified that he returned on August 2, 2017, and found there was a new owner. He testified that he was told that his possessions had been taken to the dump.

The Tenant testified that he left the hotel and went to the RCMP to report his possessions as stolen.

The Tenant is seeking compensation in the amount of \$6,000.00 for the replacement cost of all his possessions. He testified that he had a stereo; tv stand; books; dvds; cable box; and a new winter jacket. He testified that he determined the value of his possessions by researching the items on the internet and accounting for depreciation.

In reply, the Landlord testified that he was trying to get the Tenant to leave the rental property because he only paid rent for two months over the past nine months. He submitted that the Tenant was avoiding contact with management by entering his room in the late evening and early morning. He testified that there was no written tenancy agreement with the Tenant, but the Tenant was to pay \$200.00 per month.

The Landlord testified that the room comes furnished with a dresser, chesterfield, bed and fridge. He testified that the Tenant's possessions were garbage and had no value and therefore he did not go through the items to itemize them.

The Landlord submitted that there was a foul odor coming from the Tenant's room so the Landlord inspected the room and found it to be in such a poor state that the Landlord had to clear and clean the room as soon as possible.

The Landlord testified that he took all the Tenant's possessions to the dump.

The Landlord provided three photographs that he took of the room showing the state of cleanliness. The photographs show many of the Tenants possessions.

The Tenant confirmed that the photographs are of the Tenants room, and he stated that they show his book shelf; compact discs; and stereo.

Landlord's Claims

Unpaid Rent

The Landlord is seeking compensation in the amount of \$1,000.00 for unpaid rent for the months of February; March; April; May; and July 2017. The Landlord submitted that the Tenant only paid rent for January 2017, and June, 2017. The Landlord provided copies of the receipts he issued to the Tenant for the payment of rent for the months of January 2017, and June 2017.

The Landlord stated that he never issued any notices to end tenancy to the Tenant for unpaid rent.

In response, the Tenant testified that he paid all the rent owing except for July 2017.

Wages

The Landlord is seeking \$600.00 for labour costs for cleaning the room that was occupied by the Tenant and for the cost of taking everything to the dump. The Landlord is also seeking \$240.00 for his personal loss of wages.

The Landlord testified that it took 1.5 days to clean the room and take the garbage to the regional dump in Port Alberni.

Dump Fee

The Landlord is seeking \$90.00 for the cost of the dump fees for disposing of the Tenant's possessions.

Lock Replacement

The Landlord is seeking compensation for the cost of replacing the lock on the Tenant's door.

Broken Window

The Landlord is seeking \$75.00 for the cost to repair a window.

Analysis

Section 7 of the Act provides that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

Section 44 of the Act provides information on how a tenancy may end; a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- *section 45 [tenant's notice];*
- *section 46 [landlord's notice: non-payment of rent];*
- *section 47 [landlord's notice: cause];*
- *section 48 [landlord's notice: end of employment];*
- *section 49 [landlord's notice: landlord's use of property];*
- *section 49.1 [landlord's notice: tenant ceases to qualify];*
- *section 50 [tenant may end tenancy early];*
- *(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*
- *(c) the landlord and tenant agree in writing to end the tenancy;*
- *(d) the tenant vacates or abandons the rental unit;*
- *(e) the tenancy agreement is frustrated;*
- *(f) the director orders that the tenancy is ended.*

Pursuant to section 24 of the Residential Tenancy Regulation a Landlord may consider that a Tenant has abandoned personal property if:

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or the tenant leaves the personal property on residential property

(b) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

Pursuant to section 25 of the Residential Tenancy Regulations a Landlord is required to inventory and store Tenants belongings unless the Landlord reasonably believes that the property has a value of less than \$500.00.

Tenant's Claims

I find that the Landlord could not have considered the Tenant's possessions to be abandoned. The Tenant attended the hotel three days prior and had to be let into his locked room. While I accept that the Landlord noticed a foul odor coming from the Tenant's room, I do not find that the situation was an emergency. I find that the Landlord did not have a legal right to enter the Tenant's room without proper notice. I find that the Tenant's possessions were not abandoned and the Landlord disposed of Tenant's possessions without legal authority to do so.

I find that the Landlord breached the *Act* by ending the tenancy without following his responsibilities under the *Act*. The Landlord ended the tenancy without following the due process of issuing a Notice to End Tenancy as required under section 44 of the *Act*. The Tenant has a right to dispute any eviction.

I find that the Tenant has provided insufficient evidence to support his claim his possessions are worth \$6,000.00. I accept that it is difficult for the Tenant to provide documentary evidence showing his possessions, because his possessions were thrown

out. However, the Tenant acknowledged that the photographs of the room provided by the Landlord show his possessions.

I have considered the photographs provided by the Landlord. I find that the room and the possessions within the room are scattered about and appear to be in an extremely poor condition and state of cleanliness. I find that the photographs establish that the Tenant had clothing; bookshelves; stereo; and compact discs. After considering the testimony and evidence I find that the Tenant's possessions have some value. I award the Tenant \$1,500.00 in compensation for the loss of his personal property.

Landlord's Claims

Loss of Rent

I find that the parties entered into a tenancy agreement where the Tenant was required to pay the Landlord rent in the amount of \$200.00 per month.

The Tenant did not provide any banking records or receipts showing that the rent was paid. The Landlord provided copies of the receipts that were issued when payment of rent was received.

I find that the Tenant failed to pay the rent owing under the agreement. I award the Landlord compensation for a loss of rent in the amount of \$1,000.00 for the months of February; March; April; May; and July 2017.

Wages, Dump Fees, Locks, and Damage

The Landlord's claims to be compensated for the costs to clean the Tenant's room and for the cost to dispose of the Tenant's possessions and to replace the lock are dismissed. The Landlord breached the *Act* by ending the tenancy improperly. As such, the Tenant is not responsible for the Landlord's costs for cleaning; dumping fees; and lock replacement. The Tenant had no opportunity to accept or dispute a notice to end tenancy; clean the room; or remove his possessions.

The Landlord provided insufficient evidence that the Tenant was responsible for damaging a window. The Landlord's claim for \$75.00 is dismissed.

Awards

The Tenant is awarded \$1,500.00 for the loss of his possessions. The Landlord is awarded \$1,000.00 for a loss of rent. After setting off the claims, I find that the Tenant is entitled to a monetary order in the amount of \$500.00.

I grant the Tenant a monetary order against the Landlord in the amount of \$500.00. The order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

Both parties have breached the Act. The Landlord ended the tenancy improperly and improperly disposed of the Tenant's possessions. The Tenant failed to pay the rent owing under a tenancy agreement.

The Tenant is awarded \$1,500.00 for the loss of his possessions. The Landlord is awarded \$1,000.00 for a loss of rent. After setting off the claims, I grant the Tenant a monetary order against the Landlord in the amount of \$500.00.

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: January 31, 2018

Residential Tenancy Branch