



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OPT, OLC, LRE, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for Possession - Section 55;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order restricting the Landlord’s access to the unit - Section 70;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

Service of Application and Evidence

The Tenant states that the Landlord was served at the address provided by the Landlord in a two month notice to end tenancy for landlord’s use (the “Notice”) that was the subject of a previous hearing noted in the Decision dated March 12, 2018 (the “Previous Decision”). This Previous Decision is referenced on the front cover of this Interim Decision. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on April 10, 2018 in accordance with Section 89 of the Act. I also accept the Tenant’s evidence that the Landlord was served with the Tenant’s evidence package by registered mail on April 14, 2018. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on April 15,

2018 and the evidence package on April 19, 2018 regardless of whether the Landlord collected the mail.

Issue(s) to be Decided

Is the Tenant entitled to an order of possession and a restriction on the Landlord's access to the unit?

Is the Tenant entitled to an order that the Landlord comply?

Is the Tenant entitled to compensation?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in July 2017. Rent of \$1,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. The Landlord sought to end the tenancy for March 31, 2018 having served the Notice to the Tenant. The Tenant disputed the Notice, the reason for which was that all of the conditions for the sale of the rental unit had been satisfied and the purchaser had asked the landlord, in writing, to give this notice because the purchaser or a close family member intended in good faith to occupy the rental unit. The Previous Decision of March 12, 2018 finds that this Notice was not valid as the Landlord provided no supporting evidence of the purchase and the tenancy was continued.

On April 4, 2018 the Tenant was at the unit the entire day. An agent for the Landlord attended the unit that day on the basis of needing access to make repairs or renovations. The Agent was acting oddly by coming and going to the unit throughout the day with no repairs being made. While the Agent was gone from the unit the Tenant left the unit for approximately 20 minutes to collect his child from daycare. Upon return to the unit at approximately 6:00 p.m. the Tenant discovered the Landlord had changed the locks to the unit. The Tenant was refused entry to the unit or access to any of his belongings, including infant formula and diapers for the child. The Tenant called the police who attended and informed the Tenant of his rights to enter the unit by force and that the Tenant would not have any criminal charges for doing so. However given the Landlord's current and past behavior, the police recommended that the Tenant not attempt such entry. For this reason and as the Tenant's young child was present the Tenant did not attempt to break into the unit. A recent search of the title on the unit indicates that a 3rd party has become the owner. The Tenant has no evidence of what this new owner

intends to do with the unit or whether the unit is occupied by anyone. The Tenant has been staying in a hotel since the Landlord's act and claims an order returning possession of the unit to the Tenant.

On April 5, 2017 the Tenant again returned to the unit with a police presence and was again refused entry. While the Tenant was there a moving truck appeared and the Tenant's personal property was taken away to an unknown location. As a result of being locked out of the unit the Tenant incurred costs for hotel accommodation and for laundry, food, infant food and supplies, emergency clothing and personal item in the total amount of \$2,427.92. This amount is itemized in the monetary order worksheet and the Tenant provides invoices and receipts for the items. The Tenant is still incurring hotel and living costs and the Tenant has been searching for another rental unit. The Tenant claims \$2,427.92 on an interim basis for the costs already incurred and as the losses arising from not having possession of its home are ongoing the Tenant seeks an adjournment in order to bring the additional costs forward. I note that the last evidence submission made by the Tenant for this hearing was April 12, 2017 and that the Tenant submitted prepaid hotel costs to April 17, 2018.

The Tenant has claimed \$30,000.00 for the loss of his personal property however just prior to this hearing on April 28, 2018 the Tenant was provided with the location of the personal property. The Tenant has not yet had sufficient time to assess the condition or the totality of the property but has noted that rotting foods and the Landlord's renovation materials were all placed haphazardly in the storage unit along with the Tenant's personal property. The Tenant seeks an adjournment of the hearing as he requires more time to assess any damages that may have occurred in relation to this property.

The Tenant states that he lost employment income in order to deal with the immediate crisis of losing access to his home and claims \$496.14.

The Tenant states that full rent was paid for April 2018 and claims the return of \$1,200.00.

The Tenant states that the Landlord was given a forwarding address by registered mail on April 12, 2018. The Tenant claims return of the security deposit.

Analysis

Section 54(1) of the Act provides that a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution. Although there was a valid and ongoing tenancy while the Tenant occupied the unit, given the evidence of an intervening 3rd party ownership interest in the unit I decline to grant the Tenant an order of possession and also dismiss the related claim for an order restricting the landlord's access to the unit.

Section 28(c) of the Act provides that a tenant has the right to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29[*landlord's right to enter rental unit restricted*]. There is nothing in the Act that allows a landlord to arbitrarily take possession of a rental unit from an occupying tenant under a tenancy agreement. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

It is undisputed evidence that the Landlord changed the locks to the unit and stopped the Tenant from having exclusive possession of the unit, occupation of the unit and access to its belongings. As there is no evidence that the Landlord acted within its rights I find that the Landlord breached the Act and the tenancy agreement causing losses for the Tenant. Based on the undisputed evidence of the costs for the losses claimed to date and considering the supporting invoices and receipts I find that the Tenant is entitled to compensation for hotel accommodation to April 17, 2018 and for laundry, food, infant food and supplies, emergency clothing and personal item costs to April 12, 2016 in the total amount of **\$2,427.92**.

Although the Tenant did not provide any supporting evidence of a loss of a specific amount of income, I found the Tenant's evidence of having missed work to deal with a crisis to be sincere and believable. As a result and given that the Landlord did not attend the hearing to dispute this claim I accept that the Tenant did lose employment income to deal with a significant crisis and I find that the Tenant has substantiated an entitlement to a reasonable and global amount of **\$400.00**.

Based on the undisputed evidence that the Tenant paid full rent for April 2018 and was denied occupation of the unit for the full month by the Landlord I find that the Tenant is entitled to the return of the rent paid in the amount of **\$1,200.00**.

Section 7.8 of the RTB Rules of Procedure provides that at any time after a hearing begins and if the circumstances warrant it, the arbitrator may adjourn the hearing to another time. Based on the undisputed evidence that the Tenant's cost of living losses in relation to the Landlord's act to deny the Tenant access to the unit are continuing, that all or some of the Tenant's personal property has been very recently returned with as yet unknown damages, and as the Landlord is not present to make any objections or show any prejudice I find that that it would be reasonable in the circumstances to adjourn the matter. In the interim I allow the Tenant opportunity to amend his application in relation to hotel accommodation from April 17, 2018 and for other living costs from April 12, 2018 that may be accrued and in relation to damage or loss to the personal property. Further, as the Tenant did not include a specific claim for return of the security deposit on his application but has since provided his forwarding address to the Landlord and in the interests of expediency and efficiency I allow the Tenant to amend his application in the interim to add this claim. In the interim the Tenant is provided with a monetary order for **\$4,127.92** which includes recovery of the **\$100.00** filing fee.

Notices of the time and date of the reconvened hearing (the "Notice") are included with this Interim Decision. Failure to attend the hearing at the scheduled time will result in a decision being made on the basis of any information before the Arbitrator and the evidence of the Party in attendance at the hearing.

Each Party must serve the other and the Residential Tenancy Branch (the "RTB") with any additional evidence that they intend to rely upon at the reconvened hearing. Fact sheets that explain evidence and service requirements are available on the RTB website at:

gov.bc.ca/landlordtenant

If either Party has any questions they may contact an Information Officer at the RTB at:

Lower Mainland: 604 660 1020

Victoria: 250 387 1602

Elsewhere in B.C.: 1 800 665 8779

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,127.92**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This matter is adjourned. This interim decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 1, 2018

Residential Tenancy Branch