



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OT

Introduction

This decision is in respect of the tenant's application for dispute resolution made on August 3, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant sought compensation from the landlord in the amount of \$10,000.00 for a claim related to the following, as described in his application:

I AM BEING FORCED OUT OF MY UNIT, LITERALLY AT THE POINT OF A GUN, OVER SOME \$600.00 PARKING FEES, AND IN INADVERTENT UNDER PAYMENT OF A PAST SERIES OF RENT PAYMENTS. IN THE 19 YEARS AT THIS LOCATION I NEVER ONCE MISSED A RENT PAYMENT. I BELIEVE THAT THIS ACTION BY THE LANDLORD IS A "RENOVATION". I HAVE OFFERED TO MAKE UP THESE DISCREPANCIES TO INCLUDE TOPPING UP MY MONTHLY RENT TO THE GOING RATE FOR THIS BUILDING. THEY ARE GETTING A BAILIFF IN WHICH I CAN ILL AFFORD BEING A DISABLED PENSIONER.

A dispute resolution hearing was convened at 1:30 p.m. on October 19, 2018. The tenant, and three agents for the landlord attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue of this application is considered in my decision.

Issue to be Decided

Is the tenant entitled to compensation in the amount of \$10,000.00, as it pertains to the particulars as detailed in his application?

Background and Evidence

The tenant, who had lived in the rental unit for 19 years until August 2018, testified that he was evicted for a mistake related to underpayment of rent and for parking fees. In February 2018, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The tenant filed an application to dispute the 10 Day Notice, for which a dispute resolution hearing was held on July 11, 2018. The landlord had filed a cross-application for a monetary order, and the landlord's application was also heard at the same hearing. The tenant did not attend the hearing, and the arbitrator granted the landlord an order of possession and a monetary order.

On July 12, 2018, the tenant applied for a review consideration of the decision. The arbitrator conducting the review consideration dismissed the tenant's application, and confirmed the decision and orders issued on July 11, 2018. (See Related Files as referenced on the cover page of this Decision.)

The landlord served the order of possession on the tenant on July 13, 2018. The tenant's lawyer attempted to negotiate a resolution of the matter on July 30 and 31, 2018, though rather unsuccessfully it would appear. On August 2, 2018, the landlord filed for a writ of possession, but ultimately did not require bailiff services as the tenant vacated the rental unit on August 5, 2018.

The tenant took issue with the landlord telling him that he would have to pay for the costs of a bailiff, which he could not afford. He later found out that "this was not true." In his submissions, the tenant reiterated that he was unable to attend the July 11, 2018 hearing due to technical difficulties in accessing the teleconference with the access codes provided.

In its submissions, the landlord disputed the tenant's claim, as detailed in the application's particulars, that the eviction was a "renoviction." Second, they strongly dispute the tenant's claim that he was forced out of the rental unit at the point of a gun, explaining that we "do not ever kick our tenants out by gunpoint."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant seeks compensation related an eviction which he submits was made in error, and for matters related to the eviction itself. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation.

Section 7 of the Act states 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 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

In this case, the tenant and the landlord followed the Act in attempting to resolve their dispute through the dispute resolution process. The landlord filed an application for dispute resolution, attended a dispute resolution hearing, and obtained a decision, an order of possession, and a monetary order. The tenant applied for a review of the decision under section 79, and a review consideration decision resulted in the director confirming the original decision and orders.

The tenant testified about matters that were the subject of the previous decision. The landlord submitted that the tenant is attempting to retry the case. In regard to all matters that arose prior to the serving of the landlord's order of possession, the rule of *res judicata* precludes me from considering and making any findings of fact or law previously decided upon by the Residential Tenancy Branch.

Briefly, *res judicata* is a legal rule that a final judgment rendered by an administrative tribunal of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. (Black's Law Dictionary, 6th ed.)

Given the above, and applying the rule of *res judicata*, I make no findings of fact or law in respect of the issues previously arbitrated and decided upon.

However, this rule does not preclude me from making a decision in respect of the landlord's conduct or actions after the order of possession was served. The only issue post-order of possession that the landlord testified about was the landlord's statement to him that he, the tenant, would have to pay for the cost of a bailiff should a bailiff be required to forcefully evict him.

While the exact language used by the landlord in explaining this to the tenant was not provided (the statement was paraphrased), it is not in my opinion unreasonable or inaccurate. A party who requires the services of a bailiff does, in fact, have the legal right to seek compensation from the opposing party through the Provincial Court of British Columbia (Small Claims) to recoup bailiff costs.

The tenant's application claims that he was evicted "literally at the point of a gun," which the landlord stated is not how they conduct business. The tenant appeared rather confused as to the source of the landlord's response on this point and did not make any further submissions on this aspect of his claim.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not established that the landlord failed to comply with the Act, the regulations, or the tenancy agreement. Therefore, I will not consider the remaining parts of the test. The tenant has provided any evidence establishing that he is entitled to compensation. And, as such, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 19, 2018

Residential Tenancy Branch