



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICE BC
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT RPP

Introduction

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

- a monetary order for compensation for damage under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- an order for the return of the tenant's personal property.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant attended with her daughter as an assistant. The landlord's agent C.G. attended the hearing on behalf of the corporate landlord and is herein referred to as "the landlord". The landlord's counsel was also in attendance.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence. The tenant confirmed receipt of the landlord's evidence.

Based on the undisputed testimonies of the parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Amendment to Tenant's Application

On the tenant's Application, the tenant incorrectly provided the legal name of the respondent corporate landlord and named the landlord's agent as a respondent. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's Application to correctly name the corporate landlord as the respondent in this matter.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for compensation or an order that the landlord return personal property?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

At a prior arbitration hearing held on July 9, 2019 (file number noted on the cover sheet of the Decision), the parties came to a settlement agreement which required the tenant to make payment of \$590.00 of owed rent by July 31, 2019. As an enforcement of the settlement, the landlord was provided with an Order of Possession that could be served on the tenant if the tenant failed to make the payment by July 31, 2019.

The tenant testified that on July 29, 2019 she obtained a bank draft for the \$590.00 of owed rent and dropped it off in the landlord's mail slot that same day. In support of her testimony that the bank draft was dated July 29, 2019, the tenant submitted into documentary evidence bank statements and a copy of the bank draft. The tenant testified that she left a voicemail message for the landlord also that day to advise the landlord that the bank draft was in the mail slot.

The tenant alleged in her documentary evidence and in her verbal testimony provided under oath during the hearing, that on July 29, 2019 she called and spoke with the arbitrator from the prior hearing to confirm that she had made the payment of owed rent. The tenant claimed that the arbitrator told her that he "didn't care" and "hung up" on the tenant. I tried to explain to the tenant that arbitrators do not take telephone calls from parties before or after the hearing, and that she was likely confusing this with a telephone conversation with an information officer at the Residential Tenancy Branch, especially since the first name of the person she claimed to have spoken with is not the first name of the arbitrator from the prior hearing. The tenant was insistent that she had spoken with the prior arbitrator, despite my attempts to explain that her version of events was highly improbable.

The landlord testified that the tenant failed to make the required payment of owed rent by July 31, 2019. As such, the landlord posted the Order of Possession on the tenant's door on August 6, 2019. The landlord testified that it wasn't until after posting the Order of Possession that she retrieved the tenant's voicemail message stating that the payment was dropped off in the mail slot. The landlord claimed that the tenant did not leave the voicemail message until August 6, 2019. The landlord testified that she checked the mail slot every day the week of July 29, 2019 and did not receive the tenant's payment until August 6, 2019.

The tenant testified that in addition to the voicemail message she left for the landlord on July 29, 2019, she also left a voicemail message for the landlord on August 6, 2019. The tenant confirmed that she received the Order of Possession posted on her door on August 6, 2019.

The Order of Possession issued through the prior July 9, 2019 arbitration hearing stated that it was effective two days after service. As such, the tenant was required to vacate the rental unit by August 8, 2019. The tenant did not vacate the rental unit, therefore, the landlord was required to apply for a Writ of Possession from the Supreme Court to authorize bailiff services to seize the tenant's property and remove it from the rental unit, which occurred on August 23, 2019. Through the prior hearing the landlord also obtained a monetary order for the amount of rent owed of \$590.00. It was confirmed by both parties that the landlord cashed the bank draft for the owed rent on August 6, 2019.

The tenant's claim requests \$35,000.00 in compensation and the return of her personal property.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find that the tenant's Application for monetary compensation in the amount of \$35,000.00 and the return of personal property should be dismissed. My reasons follow.

In a claim for damage or loss under section 67 of the *Act*, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, it is the tenant who bears the burden of proof to prove their claim, on a balance of probabilities.

In this matter, the determinative issue is whether the tenant deposited the bank draft for the unpaid rent in the landlord's mail slot on or before July 31, 2019 as required by the terms of the settlement agreement. If the tenant failed to do so, and the tenant failed to vacate the rental unit within two days of service of the Order of Possession, then the tenant failed to comply with the *Act*, and the landlord acted in accordance with the *Act* to apply for a Writ of Possession and obtain bailiff services to remove the tenant's possessions from the rental unit.

The parties provided conflicting versions of events in their testimony regarding when the bank draft was deposited in the landlord's mail slot, and neither party could provide any corroborating witness testimony or documentary evidence to clearly confirm their version of the events of when the bank draft was deposited in the mail slot.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating witness testimony or evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As previously noted, the tenant bears the burden of proving her claim on a balance of probabilities. After reviewing the totality of the evidence and testimony before me, when weighing these two versions of events, I find that the tenant has failed to provide sufficient evidence to meet this burden and I therefore dismiss her claim.

Conclusion

The tenant's application is dismissed in its entirety.

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 21, 2019

Residential Tenancy Branch