



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord sought an adjournment of the proceedings. The landlord said they have recently filed their own application seeking a monetary award under the file number on the first page of this decision. The landlord submits that it would be appropriate to adjourn the present hearing and have both applications heard together at a future date.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find insufficient basis for an adjournment of the present hearing. A review of the applications show that while the two applications arise from the same residential tenancy, the matters are sufficiently disparate that different facts would be considered. I find that the applications would require different determinations of fact and law be made.

I find little prejudice to the parties to proceed with the present hearing as scheduled. The landlord provided little substantive submissions as to why they did not file their own application earlier instead of waiting until a few weeks prior to this hearing to make their own claim. I find that the adjournment request arises from the landlord's failure to take action and file their own claim earlier. Under the circumstances, I find that the landlord has not met the criteria set out for granting an adjournment and the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on July 15, 2020. The monthly rent was \$1,700.00 payable on the 15th of each month. The tenant paid a security deposit of \$850.00 which is still held by the landlord. The rental unit is a suite in a multi-unit strata managed building.

On December 16, 2020 the tenant found they were unable to access the rental building. Neither the tenant nor the landlord had issued a notice to end tenancy pursuant to the *Act*.

The tenant filed an expedited application for dispute resolution seeking an Order of Possession of the rental unit. In a decision dated January 7, 2021, under the file number on the first page of this decision, the presiding arbitrator found there was an effective tenancy and granted the tenant an order of possession.

The arbitrator wrote:

I find that the landlord did not have an order of possession authorizing possession of the unit, nor a sanctioned eviction of the tenant. There is no evidence the landlord sought or received a Supreme Court writ of possession. Based on this, I find the landlord did not have the legal authority to evict the tenant from the rental unit on December 16, 2020.

I find the tenant has the legal right to possess the rental unit. This is based on the uncontested statements of the tenant in the hearing, as well as the key piece of evidence in the form of the text message from the landlord, reproduced above.

I grant the tenant an order of possession effective immediately. The landlord is so ordered to allow the tenant access to the rental unit. This entails a reactivation of the key fob, effective immediately

The landlord applied for review consideration of the decision of January 7, 2021. Another arbitrator reviewed the application for review consideration and upheld the decision and order of January 7, 2021.

The parties agree that the landlord did not comply with the order of the Branch to grant the tenant possession of the rental unit. The tenant ultimately chose not to enforce the order through the Supreme Court of British Columbia and the parties now consider the tenancy to have ended.

The parties agree that the tenant has not provided a forwarding address to the landlord in writing in accordance with the *Act* as of the date of the hearing. The tenant stated at the hearing that the address for service of the present application is not their forwarding address.

The tenant submits that the unauthorized eviction by the landlord has inconvenienced them, forced them to incur unexpected costs for moving out of the rental unit and they remain without a fixed address as at the date of the hearing. The tenant seeks a monetary award in the amount of \$30,000.00 comprised of:

Item	Amount
Bad Faith Eviction	\$20,400.00 (12 x \$1,700.00)
Loss of Quiet Enjoyment	\$3,400.00
Return of Security Deposit	\$850.00
Moving Expenses	\$350.00
Loss of Personal Item- Painting	\$5,000.00
TOTAL	\$30,000.00

The tenant testified that they have receipts and invoices for moving expenses and costs of alternate accommodations but did not submit any into documentary evidence for this present application.

The parties agree that there was a painting left in the rental unit which the tenant was not able to retrieve as the landlord had denied them access. The landlord retains the painting and says that they are able to return it to the tenant. The parties disagree on the value of the painting.

The landlord submits that they discovered the tenant had substantially moved out of the rental unit by December 15, 2020 and considered the rental unit abandoned. The landlord changed the locks at that time and denied the tenant access to the rental unit thereafter. The landlord confirmed that they have not allowed the tenant access to the rental unit in accordance with the decision and order of January 7, 2021.

The landlord submits that the tenant had already vacated the rental unit when the landlord denied them access to the rental unit on December 16, 2020 and disputes that the tenant incurred any losses or costs. The landlord said that the tenant did not file the Order of Possession of January 7, 2021 with the courts to have the Order enforced.

The landlord has subsequently sold the rental property to new owners as of April 22, 2021.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's provision of a forwarding address in writing.

In the present case, the parties agree that the tenant has not provided a forwarding address in writing. The tenant testified that the address for service of the present application is not their forwarding address.

In accordance with section 38 of the *Act*, the landlord's obligation to return the deposit or file an application for authorization to retain all or a portion of the deposit has not commenced as the tenant has not provided a proper forwarding address in a manner consistent with the *Act*. I therefore find that this portion of the tenant's application is premature and dismiss it with leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant seeks a monetary award in the amount of \$20,400.00 the equivalent of the monthly rent of \$1,700.00 multiplied by 12 for what they call a "bad faith eviction". I find no basis for such an award.

Based on the tenant's submissions and testimony it appears that the tenant is basing their calculation on section 51 of the *Act* which provides that a tenant who receives a notice to end a tenancy under section 49 is entitled to compensation if the landlord does not establish that the rental unit was used for the stated purposes of ending the tenancy.

In the present case there is no evidence that the landlord issued a notice to end tenancy for landlord's use under section 49. The parties agree that neither the landlord nor the tenant ever issued a notice to end this tenancy. Therefore, I find no basis for a monetary award and dismiss this portion of the tenant's application without leave to reapply.

I find insufficient evidence to support the tenant's claim for moving expenses. While the tenant says they incurred expenses and claimed that they have receipts and invoices in their possession, they failed to submit them into documentary evidence. I find that the tenant's testimony claiming that they have incurred expenses is insufficient to establish there was any losses or their monetary amount. Accordingly, I dismiss the portion of the tenant's application seeking an award for moving costs.

The parties agree that the landlord retains a painting which is the personal possession of the tenant. The landlord submits that they consider the painting to be abandoned personal property pursuant to section 24 of the Regulations which states:

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or
 - (ii) from which the tenant has removed substantially all of the tenant's 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.

I find the present circumstances does not support the landlord's interpretation that the personal items left in the rental unit are abandoned personal property. In the case at

hand, I find that the tenant did not vacate the rental unit but was forcibly denied access despite no proper notice to end tenancy being issued. The tenant obtained an Order of Possession of the rental unit to regain access, but the landlord failed to comply with the decision of the Branch. I find that the inability of the tenant to retake possession of their personal items is a direct result of the landlord's contravention of the tenancy agreement, Act and order of the Branch.

The landlord now says that the personal items are available for retrieval by the tenant. I therefore find it appropriate to order that the painting and any other personal items of the tenant be returned by the landlord at the landlord's expense. I find that the provisions of Regulation 26 requiring the tenant to reimburse the landlord for costs of removal and storage do not apply as the items were not abandoned as set out in the *Act* and Regulations.

I find it is premature for a determination of the tenant's application for a monetary award for these personal items. I dismiss this portion of the application with leave to reapply should the items not be returned or the tenant find them to be damaged or decreased in value.

I accept the undisputed evidence of the parties that the landlord did not comply with the decision of January 7, 2021 and grant the tenant possession of the rental unit. As noted in the earlier decision the landlord acted without legal authority in contravention of the *Act*, regulations and tenancy agreement initially and subsequently in disregard of the decision and order of the Branch.

I find that the sudden inability to access their rental unit had negative effects on the tenant's right to access and enjoy their tenancy. While the tenant did not submit invoices for expenses and alternate accommodations, I find it a reasonable conclusion that being denied access to their rental unit would have significant impact on a tenant.

The tenant testified that they have stayed with friends and acquaintances, sought other long-term accommodations and have had their daily life severely disrupted by the sudden inability to reside in the rental unit. The tenant says they filed their earlier application seeking an Order of Possession for the rental unit but when the landlord continued to deny them access decided against filing the Order with the courts and incurring further expenditures.

Under the circumstances, I find that the landlord's actions have had significant negative effects on the tenant. The tenant was suddenly unable to enter their home and despite proceeding in accordance with the legislation were stymied by a landlord who acted with high-handed disregard for the rule of law, their obligations under the Act, regulations and tenancy agreement, and the tenant's rights. The tenant suggests a monetary award in the amount of \$3,400.00 is appropriate for their inconvenience and losses. I agree and accordingly issue the tenant a monetary award in that amount.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$3,400.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The portions of the tenant's application seeking a return of the security deposit for this tenancy and an award for the value of their personal possessions is dismissed with leave to reapply.

The balance of the application is dismissed without leave to reapply.

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: August 11, 2021

Residential Tenancy Branch