



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened in response to an application by the Tenant for a monetary order for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that they did not receive any evidence with the Tenant’s package. The Tenant states that their evidence provided to the Residential Tenancy Branch (the “RTB”) was given to the Landlord. The Tenant states that the Landlord provided no evidence to the Tenant. The Landlord states that their evidence was given to the Tenant by registered mail on April 27, 2022. The Landlord states that the mail was delivered, and postal tracking indicates that the delivery of the mail was signed for verbally on May 2, 2022. The Landlord consents to providing oral evidence alone.

RTB Rule 3.14 provides that documentary evidence that is intended to be relied on at the hearing by the Applicant must be received by the Respondent not less than 14 days before the hearing. RTB Rule 3.15 provides that evidence that the respondent intends to rely on at the hearing must be served on the applicant not less than 7 days before the

hearing. As the Tenant did not provide any supporting evidence of the delivery of its evidence to the Landlord and as the Landlord has denied receipt of that evidence, I find on a balance of probabilities that the Landlord did not receive the Tenant's evidence. I therefore decline to consider those parts of the Tenant's evidence that would not have already been in the Landlord's possession, such as a writ of possession for the Landlord from the BC Supreme Court. The Tenant may give oral evidence of the excluded documentary evidence. As the Landlord agrees to provide oral evidence instead of relying on any documentary evidence, I decline to consider the Landlord's documentary evidence.

Issue(s) to be Decided

Is the Tenant entitled to compensation?

Background and Evidence

The following are agreed facts: the tenancy started 6 years ago and ended October 27, 2021. No security deposit was collected. During the tenancy monthly rent of \$550.00 was payable.

The Tenant states that the Landlord gave the Tenant a two month notice to end tenancy for landlord's use (the "Notice") and that the Tenant was to move out of the unit in June or September 2021. The Tenant states that the Notice was ignored by the Tenant and not disputed as the Notice contained an incorrect move-out or effective date. The Tenant states that the Landlord did not serve the Tenant with any documents in relation to a claim for an order of possession and that when the Tenant paid rent on October 1, 2021 the Landlord never said anything about the claim. The Tenant states that they did not have access to their own mail delivery as all mail was collected by the Landlord and that many mail items were never delivered to the Tenant by the Landlord. The Tenant states that they were never served with any order of possession and that they only found out about the Landlord's order of possession from the sheriff who came to remove the Tenant on October 27, 2021. The Tenant states that it was subsequently

informed by the RTB that a hearing was held on October 13, 2021. The Tenant states that they could not have attended the hearing as they received no notice about the hearing. The Tenant states that had they received the Landlord's application for an order of possession they would have moved out of the unit. The Tenant states that the bailiff gave the Tenant a copy of a writ of possession and the bailiff's bill. The Tenant states that they paid the bailiff's bill in the amount of \$3,149.00 and for the cost of storing the Tenant's belongings for two months. The Tenant claims a total of \$3,391.00.

The Landlord states that the Notice was dated March 13, 2021 and on the same date was posted on the Tenant's door. The Landlord states that the Notice had an incorrect effective date of May 13, 2021 that would have been automatically corrected to be May 31, 2021. The Landlord states that since the Tenant did not move out of the unit by the effective date the Landlord applied for an order of possession on June 16, 2021 and a hearing was scheduled for September 30, 2021. The Landlord states that the hearing was then rescheduled by the RTB to October 7, 2021. The Landlord states that the decision dated October 13, 2021 (the "Decision") finds that the Landlord served the Tenant as required under the Act. The Landlord states that the Decision granted the Landlord an Order of Possession that was effective two days after service on the Tenant and that the Order of Possession was sent to the Tenant on October 18, 2021 by registered mail. The Landlord states that the mail was signed for by the Tenant on October 20, 2021. The Landlord states that this service evidence was provided to the BC Supreme Court for the Writ application. The Landlord states that the Writ and sheriff or bailiff were authorized by an order from the BC Supreme Court.

The Tenant states that the Landlord did not deliver any documents to the Tenant, that the Landlord lied about service to the RTB and the BC Supreme Court. The Tenant states that the Landlord keeps the Tenant's mail. The Tenant states that they reported the Landlord's actions to the police.

The Landlord states that the Tenant did not pay the bailiff costs as the Landlord paid these costs. The Landlord states that the Landlord paid \$1,700.00 on October 22, 2021 and another \$1,000.00 on October 27, 2021. The Landlord states that they received a refund of \$1,000.00 after two weeks. The Landlord states that although they also obtained an order from the BC Supreme Court to seize and sell the Tenant's belongings however nothing was seized or sold by the Landlord. The Landlord states that they are not seeking payment of these costs from the Tenant.

The Tenant states that the Tenant's mother paid the bailiff bill by cash and that they were provided a receipt for this payment. The Tenant states that the amount of \$3,149.00 that was paid included taxes and the locksmith charges. The Tenant states that the receipt is for \$3,065.00. The Tenant provides a copy of the receipt.

Analysis

Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties. The Tenant is seeking compensation for the bailiff costs in relation to the Tenant's removal from the unit. It is undisputed that the Tenant was given a notice to end tenancy for landlord's use (the "Notice") and did not dispute the Notice. It is undisputed that in the Decision the Landlord obtained an order of possession from the RTB for the Tenant's unit on the basis of the undisputed Notice. Even if the Tenant did not receive any notice of the Landlord's application claiming the order of possession, the Decision is final and binding on the Parties until otherwise changed such as through the review consideration process under the Act. The Act provides a party with an opportunity to have a reconsideration of any decision on the basis of fraud. There is no evidence that the Tenant sought a review of the Decision granting the Landlord an order of possession.

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. Section 57(2) of the Act provides that the landlord must not take

actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. There is no dispute that the Landlord obtained a writ of possession from the Supreme Court. Any fraud by the Landlord at the Supreme Court is not under the jurisdiction of the Act. As the Landlord did not remove the Tenant without having an issued Writ of Possession, I find that the Tenant has not substantiated that the Landlord breached the Act in obtaining possession of the unit. As the losses claimed by the Tenant arose from the removal of the Tenant and their belongings pursuant to the Writ, I find that the bailiff costs are not related to any breach by the Landlord under the Act, and I dismiss the Tenant's claim for compensation.

Conclusion

The application is dismissed.

This 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: June 29, 2022

Residential Tenancy Branch