



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOVA RELOCATION INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, RPP

Introduction

This hearing dealt with the tenant's application (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and an order requiring the landlord to return his personal property.

The tenant's agent (agent) attended the hearing; however, the landlord did not attend.

The agent was the primary applicant and stated that he served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail. The tenant provided the Canada Post tracking number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I accept the tenant's evidence that the landlord was served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the landlord's absence.

The agent was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

Is the tenant entitled to an order requiring the landlord to return their personal property?

Background and Evidence

The tenant's monetary claim is \$7,875. In the application, the tenant writes the following:

Since (tenant first name) has paid June's rent and was told to vacate the property, he is seeking the return of his \$1200.00 for June, and his \$600.00 security deposit. Further, (tenant first name) has signed a one-year contract with NOVA Relocation Inc. on November 01 2022, and is seeking the remaining months (July-November) so that he is able to plan his life and find housing accordingly. NOVA Reloaction Inc. has breached their contract with (tenant first name).

[Reproduced as written except for anonymizing personal information to protect privacy]

The agent submitted that a tenancy began between the tenant and the landlord on November 1, 2021, for a fixed-term through November 1, 2022. The agent submitted that the tenant moved out on June 5, 2022, as required by the landlord for extermination purposes and that on June 6, 2022, his fob access was deactivated. Thereafter, the landlord told the tenant to pick up their belongings elsewhere. The agent submitted that the tenant paid the monthly rent of \$1,200 for June 2022.

The agent said that the tenant has previously been in dispute resolution against this landlord where the tenant sought an order of possession of the rental unit and was successful. The tenant was issued an order of possession of the rental unit on July 11, 2022, effective in 2 days. The agent submitted that the tenant did not seek to enforce the order of possession due to the costs.

The agent submitted that instead of the entire monetary claim, the tenant now wants his monthly rent of \$1,200 back, as well as the security deposit of \$600. The tenant also requested the order for a return of his personal property and refund of a registration fee of \$75.

The agent submitted proof of payment for the June 2022 rent, proof of payment of the registration fee and security deposit and a tenancy agreement.

As to the request for a return of the tenant's personal property, the agent stated that the tenant was deprived of his personal property due to being denied access. The personal property included snowboard gear, a coffee machine, and shoes.

Analysis

Based on the relevant evidence and a balance of probabilities, I find as follows:

Monetary claim -

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the undisputed evidence is that the landlord and the tenant entered into a tenancy agreement, for a monthly rent of \$1,200 and that the landlord collected a security deposit of \$600. The undisputed evidence is that the tenancy began on November 1, 2021 for a one year fixed-term, and the tenancy continued until June 5, 2022, when the landlord deprived the tenant access to the rental unit.

Residential Tenancy Branch Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law. If a tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages,

even where there has been no negligence on the part of the landlord. Compensation would be in the form of a monetary award for the portion of the premises or property affected.

I agree with the Policy Guideline and find that the landlord deprived the tenant of the rental unit as contracted for, beginning June 2022.

I find it reasonable that due to the landlord's breach of the Act and tenancy agreement, the tenant is entitled to monetary compensation in the amount of \$1,200, representing the rent he paid for June 2022.

I also find the tenant is entitled to a return of his security deposit of \$600 as the tenancy has ended.

As to the registration fee, I find the landlord charged a fee that is not recognized as allowable under Residential Tenancy Regulations. I therefore find the tenant is entitled to a return of the \$75 registration fee.

I do not find it appropriate to award the tenant further monetary compensation beyond June 2022, as there was insufficient evidence of a loss for the months following June 2022.

I do not award the tenant recovery of the filing fee for this application as no fee was paid.

Due to the above, I find the tenant is entitled to a monetary award of \$1,875, comprised of \$1,200 for reimbursement of the monthly rent for June 2022, the security deposit of \$600, and the unauthorized registration fee of \$75.

I therefore grant the tenant a monetary order pursuant to section 67 of the Act for the amount of \$1,875.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

Order for a return of personal property –

As to the matter of a return of his personal property, as the landlord has denied access to the rental unit as has been discussed, pursuant to section 65(1)(e) of the Act, I **ORDER** the landlord to return all personal property of the tenant, which includes snowboard gear, a coffee machine, and shoes, immediately.

Should the landlord fail to do, the tenant is entitled to seek further monetary compensation.

Conclusion

The tenant's application for monetary compensation is partially successful.

The tenant is granted a monetary award of \$1,875 and is granted a monetary order in that amount.

The landlord has been ordered to return all the tenant's personal property, immediately.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 18, 2022

Residential Tenancy Branch