



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MNDC, RPP

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord provide access to the rental unit; to return the tenant's personal property; and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenants and the landlord.

In the hearing it became evident that the two tenants had two separate tenancy agreements with the landlord, however I have joined the matters to hear together in accordance with Residential Tenancy Branch Rule of Procedure 2.2.

I also note, the tenants had previously applied for the same matters on October 14, 2011 and that they cancelled the hearing on October 18, 2011. I also note the tenants submitted a second Application for the same matters on October 21, 2011 and that when both the tenants and the landlord did not attend the hearing set for November 1, 2011 based on that Application the matter was dismissed with leave to reapply.

At the outset of the hearing the tenants requested an adjournment. The adjournment was sought because the female tenant had failed to submit any of her financial documentation in support of their claim. The tenant testified that the receipts for hotels and food were stolen sometime during the first week of November, 2011.

The female testified that she did obtain copies of these documents from her ex-husband on the evening of November 28, 2011. The female tenant testified that she did not attempt to obtain the documents from her ex-husband until this time because he works a lot and is not always available, additionally they are currently divorcing and her husband, although he has been helping pay for accommodation for the tenants, has been uncooperative at times.

As the tenants have filed their Application three times in this matter, and not followed through on the first two Applications, I find it would be prejudicial to the landlord to adjourn the matter any further. In addition, I find that by not seeking out copies of the evidence the female tenant asserts was stolen until the week of this hearing the tenants have failed to take appropriate steps to prepare, which is not a justification for adjournment.

For these reasons, I dismiss the tenants' request for an adjournment and the hearing proceeded based on the testimony and evidence submitted to date by the tenants.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order granting return of their possessions; an order to gain access to the rental unit; and to a monetary order for compensation for damage or loss, pursuant to Sections 28, 30, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The male tenant's tenancy began on August 1, 2011 as a month to month tenancy with a monthly rent of \$450.00 due on the 1st of each month with a security deposit of \$225.00. The female moved into the rental unit while the landlord was out of town, but she cannot remember an exact date.

The landlord confirmed in her testimony that when she returned from her trip on September 25, 2011 she agreed to a tenancy with the female tenant for a monthly rent of \$450.00. The landlord confirmed the female tenant paid the rent but that by October 8, 2011 the landlord returned the \$450.00 and told the tenant she was to vacate the rental unit.

The parties agree that on October 8, 2011, while the tenants were away from the residential property the landlord changed the locks and had refused the tenants entry or the ability to retrieve their belongings until the week of November 20-26, 2011. The landlord testified that she had not returned the male tenant's rent. In this period the landlord had moved all of the tenants' possession to the garage except for the male tenant's television.

The tenants have retrieved all of the possessions except for the television but assert that some of their possessions have been damaged or are missing. The tenants provided photographic evidence of some of their items including broken plates and memorabilia; Real Estate training materials; a computer and electronic equipment the female tenant described as naturopathic medical equipment.

The tenants assert that as a result of the landlord's actions of locking the tenants out they have had to spend approximately \$10,000.00 for accommodation and meals over the last 8 week period and that they have also had to spend nights sleeping in their car.

Further the tenants submit that as a result of the landlord's action of not allowing them to retrieve their belongings the female tenant was unable to complete a Real Estate course that would have allowed her to gain employment and the male tenant was unable to attend a training program to gain alternate employment as well.

The tenants testified that they had witnesses who would testify to these issues but that they were unavailable at this hearing time because they worked but that they would be available to call me at a future time. I advised the tenants during the hearing that the hearing was the only time I could accept testimony from the parties or their witnesses.

The tenants also seek \$5,000.00 for emotional and physical abuse suffered by the tenants from the actions taken by the landlord. The tenants testified that as a result of the landlord's actions they have had to endure homelessness and persecution from police and other indignities.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 30 of the *Act* requires that the landlord not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property.

I accept the parties had a tenancy agreement, based on the testimony of each party, and that as a result the landlord could not simply change the locks to end the tenancy. If the landlord had wanted to end the tenancy she would have had to provide a notice to end the tenancy that was in compliance with Part 4 of the *Act*.

As a result, I accept the tenants have suffered a loss that results from a violation of the *Act* on the part of the landlord.

As to the value of that loss, I accept, based on the testimony of both parties that the landlord did not return to the male tenant the rent he had paid for the month of October, 2011 and I find this is part of the value of the tenants' loss. I order the landlord to return the rent paid by the male tenant for the month of October 2011.

However, I find the tenants have failed to establish that they suffered a loss for the cost of accommodations or food, in the amount of \$10,000.00. The tenants have also failed to provide any evidence to support their claim that these actions of the landlord have caused them to lose employment opportunities or wages in the amount of \$10,000.00.

And finally, as to the tenant's claim for compensation for emotional and physical abuse, I find the tenants have provided no evidence to establish how they determined the value of this loss and based on the repeated failure to follow through on their Applications for

Dispute Resolution provide evidence that the tenants failed to take all reasonable steps to mitigate any of the effects of the landlord's actions.

As the tenants have found a new rental unit there is no longer a need to gain access to the rental unit except to recover the male tenant's television. I order the landlord to provide the tenants with the opportunity to retrieve the television at a time that is mutually agreeable to both parties.

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$450.00** comprised of rent paid by the male tenant.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 30, 2011.

Residential Tenancy Branch