Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PRSF, RPP, LRE, O

Introduction

This hearing dealt with the tenants' amended application to request a Monetary Order for damage or loss under the Act; Orders for compliance, to provide services or facilities, return the tenants' personal property and suspend the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The parties had an employment relationship that included living accommodation as part of the compensation package. Neither the employment contract nor the tenancy agreement was in writing. The employment was terminated, followed by the termination of tenancy. A significant amount of testimony and hearing time was spent isolating facts and evidence pertinent to a tenancy dispute as opposed to an employment contract dispute.

The hearing commenced July 4, 2012 at which time I determined the tenancy was still in effect and the issues most pressing pertained to locks on doors to living accommodation, access to storage areas, phone service, and the landlord's restricted right of entry. After hearing from the parties in the time allotted the hearing was adjourned and I issued an Interim Decision with orders. The Interim Decision is an integral part of this decision and should be read in conjunction with this decision. I had also informed the parties that since the hearing had already commenced I would not accept any further documentary evidence with the exception of police reports.

The hearing reconvened on July 31, 2012 and I confirmed that the tenancy had ended and possession of the unit had been returned to the landlord. Accordingly, I found it unnecessary to further consider the tenants' requests that the landlord provide services or facilities, Orders for compliance or Orders restricting the landlord's right to enter. The tenants also withdrew their request for return of personal property as they had not had to opportunity to determine whether items other than a boat and boat motor were

missing. This part of their application was dismissed with leave to reapply and the hearing continued with respect to the tenants' monetary claim. The majority of the hearing time on this date was spent hearing the tenants' claims against the landlord and the landlord's responses. The hearing was adjourned again in order to provide the parties an opportunity to provide rebuttals and final arguments. The tenants indicated that they preferred to provide their rebuttal via verbal testimony as opposed to written submissions. Their preference was accommodated and the hearing was reconvened on October 2, 2012.

Prior to the October 2, 2012 reconvened hearing the tenants served a written submission prepared after the hearing commenced and included a more detailed version of events from their perspective. On October 2, 2012 the landlord's counsel objected to inclusion of the submission on the basis it was new evidence and contradicted the tenants' request for an oral hearing and my previous instructions prohibiting new documentary evidence. I accepted the position of the landlord's counsel and refused to accept or consider the most recent written submission from the tenants. The tenants attempted to read from their most recent written submission; however, given both parties had already been provided the opportunity to present their position in writing prior to the commencement of the hearing and verbally on July 4, 2012 and July 31, 2012, I instructed the parties that the hearing time would be limited to hearing rebuttal evidence and final arguments.

The landlord's counsel raised an issue with respect to jurisdiction at the reconvened hearing of October 2, 2012, in particular the exemption from the Act provided under section 4(1)(d). I dealt with this issue as I must be satisfied that I have jurisdiction to resolve a dispute before me.

Section 4(1)(d) exempts the following from the Act:

> (d) living accommodation included with premises that
>
> (i) are primarily occupied for business purposes, and
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> (ii) are rented under a single agreement,

The above exemption is intended to exempt commercial tenancies from the application of the Act. After hearing from the parties, I was satisfied this was not a commercial tenancy and that the rental unit was residential living accommodation provided to a manager or employee of the landlord that is separate from the office where landlord's business was primarily conducted. The Act contemplates living accommodation provided to employees, caretakers, and managers hired by the landlord as evidenced by section 48 of the Act which provides for termination of such tenancies. Therefore, I

found the living accommodation not exempt from the Act and that I have jurisdiction to resolve this dispute, as it pertained to a tenancy relationship.

Issue(s) to be Decided

Have the tenants established an entitlement to monetary compensation of $8,466.02 from the landlords for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

Both parties provided a considerable amount of submissions, both orally and in documentary form, in support of their respective positions. I have carefully considered everything presented to me; however, in writing this decision I have summarized the parties' respective positions as they relate to a tenancy dispute. I have made every effort to eliminate aspects relevant to the employment dispute and irrelevant to the tenancy dispute.

The landlord operates an RV club and on the property is a building which contains the landlord's office, the on-site manager's living accommodation, a clubhouse, and storage areas, among other things. The RV club is managed by a Board of Directors.

The tenants responded to an advertisement placed by the RV club for on-site managers. The advertisement indicated the compensation package included living accommodation described as: a 3 bedroom, 2 bathroom house with appliances, including a washer and dryer; and, internet, phone and utilities.

The tenants were hired as the managers of the property. The tenants did not pay a security deposit and were not required to pay rent. The tenants moved into the living accommodation (herein referred to as the rental unit) in April 2012. The rental unit had a main entry door along with two other doors that adjoined the clubhouse and the landlord's front office.

It was undisputed that on May 14, 2012 the tenants took a day off from work and stayed in a hotel in a nearby town. On May 15, 2012 the tenants were served with a written 24 hour notice of entry and told to take another day off of work. The tenants proceeded to leave the property and returned to the hotel. On May 16, 2012 the landlords entered the rental unit looking for property belonging to the landlord's business. The tenants' employment was terminated via a letter emailed to the tenants on May 16, 2012. The letter also indicated that the tenants would have to vacate the rental unit by June 15, 2012. The landlords subsequently served the tenants with a 1 Month Notice to End

Tenancy for End of Employment (the Notice) in June 2012 with an effective date of July 31, 2012.

Tenants' position

The tenants submit that they when they left the property on May 15, 2012 they returned to the hotel and continued to stay at the hotel until May 22, 2012. The tenants then stayed with family and community services before returning to the hotel on June 11, 2012. The tenants were provided possession and started paying rent at a new rental unit effective June 15, 2012.

The tenants left their cat at the rental unit until May 19, 2012 when they had security firm pick it up. The cat was boarded from May 19 until July 7, 2012. The tenants explained that they kept the cat boarded for several weeks after they took possessions of their new apartment because they did not have all of their possessions from the landlord's property and they had to make sure they could afford new rental unit.

The tenants submitted that they did not return to live in the rental unit on the landlord's property because they felt harassed by the landlord and did not feel safe. The tenants explained that the landlord had reversed the locks on doors so that the people from the adjoining office or clubhouse could enter their unit. In addition, the landlord illegally entered their rental unit, the tenants' telephone service was terminated; the landlord changed the locks to the storage rooms where some of their possessions were stored; the landlord's agent waited outside the rental unit and took pictures of them as they moved their possessions out of the rental unit; and, the landlord yelled at them that they were trespassing.

Upon enquiry, the tenants stated they did not purchase a slid lock or chain lock or other devise that would secure the adjoining doors because they could not afford it after paying the hotel costs. In addition, phone service was vital as the property is not serviced by cellular service and the tenants felt they needed to call police if they stayed on the property.

The tenants submitted that as part of their tenancy agreement they were provided two storage rooms in the building. In support of this position the tenants claim that they have an email dated April 14, 2012 that was sent to the club members by the former President advising members to remove their belongings from storage so that the tenants could use the space. I asked the tenants to read from the email directly as the document was submitted into evidence. The tenant responded that she had not

retrieved the document prior to the hearing and could not have access it on the computer during the hearing.

The tenants are seeking recovery of the following amounts:

Description	Applicable Date(s)	Documentary Evidence	Amount
Hotel and restaurant	May 15 - 22, 2012	Hotel statement	1,284.78
Restaurant	May 19 – 22, 2012	Various restaurant receipts	102.21
Clothing	May 19, 2012	Receipt	21.16
Retrieval of cat	May 19, 2012	Security Company Invoice	504.00
Boarding of cat	May 19 – July 7	Breakdown by tenants	482.22
Movers	June 21, 2012 and a second date	Email of June 21, 2012	2,511.04
Telus bill rental unit		None	61.27
Security deposit, pet deposit, plus rent paid to new landlord for June 15 - July 31, 2012	Tenancy commencing June 15, 2012	Tenancy agreement	2,312.50
Utilities at new residence	June and July 2012	None	270.00
Gas	Various	Receipts	256.00
Hotel and restaurant	June 11, 2012	Hotel statement	93.29
Restaurants	June 12, 2012	1 receipt only	36.96
Supplies and photocopying in preparation for dispute	June 24, 2012	Receipts	117.68
Total Claim			**$ 8,466.02**

In summary, the tenants submit that they suffered a loss of quiet enjoyment and the ability to access storage areas afforded them under their tenancy agreement which lead to leave the rental unit and stay elsewhere. The tenants seek to recover the out of pocket expenditures associated to leaving the rental unit.

Landlord's position

The landlord submitted that the tenants were not denied access or use of the rental unit and the tenants had the benefit of having the rental unit an additional month since the Notice was not served immediately after termination of employment.

The landlord acknowledged reversing the locks on the adjoining doors and this was done to limit the tenants' ability to enter into the landlord's office and clubhouse after their employment was terminated. The landlord did purchase double locks and installed them on the adjoining doors of the rental unit after receiving my Order of July 4, 2012. The landlord pointed out that the tenants did not attempt to secure the adjoining doors from the inside of the rental unit in any way. The landlord confirmed that the locks on the main entry door of the rental unit were not changed during the remainder of the tenancy.

The landlord denied that the tenants were harassed but acknowledged that a person was hired to take pictures of items the tenants removed from the rental unit. The reason for doing so related to allegations involving their conduct as managers and the end of employment. The landlord acknowledged that the tenants may have felt uncomfortable staying at the rental unit but attributed that feeling to the termination of the employment.

The landlord acknowledged that the tenants had put many of their possessions in the storage rooms but that the space was not for their use exclusively as tenants. Rather, they were given keys and use to those storage rooms because they were managers. Other club members have stored items in the storage rooms but were not provided keys. Rather, those members would have to request entry from one of the Board of Directors who has keys to the storage rooms. The tenants were afforded this same opportunity to access the storage areas after their employment was terminated. All of the Board of Directors present during the hearing denied receiving an email dated April 14, 2012 from the former President requesting members to remove their belongings from the storage rooms to accommodate the tenants.

The landlord acknowledged that the landlord entered the rental unit to check on and feed the tenants' cat as it appeared they had abandoned the cat and the landlord was uncertain as to when the tenants would be returning. While in the unit the landlord left the tenants' mail in the unit.

The landlord acknowledged that phone service to the tenants' residence was inadvertently disconnected along with the landlord's fax line on or about May 17, 2012. However, the landlord pointed out that the tenants did not advise the landlord of such

until June 5, 2012. The landlord acknowledged that cellular phone service does not work in the area and the tenants were informed that they could use the service phone that is available on the property for club members.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the tenants are the applicants in this dispute, the tenants bear the burden of proof. The burden of proof is based on the balance of probabilities.

The Act requires that all tenancy agreement be in writing; however, the definition of tenancy agreement includes tenancy agreements that are not in writing. Accordingly, the rights and obligations of landlords and tenants who do not have a written tenancy agreement shall be enforced in accordance with the requirements of the Act and Regulations. In addition, other terms of a verbal tenancy agreement may be enforced so long as the terms do not contradict the Act.

As with many oral contracts, difficultly arises where a decision maker is tasked with determining oral terms that are come into dispute. Where parties provide a different version of what was agreed upon under their tenancy agreement and a different version of events that transpired after the tenancy commenced, as in this case, credibility of the parties is crucial.

In assessing the credibility of the parties before me I have considered that in *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the*

> *particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Upon consideration of everything presented to me, I find the tenants' claims to be exaggerated and to be lacking credibility in significant areas. I also find the tenants did not take reasonable steps to mitigate their losses as required for claimants. I have arrived at these conclusions based upon the following factors, among other things:

- The tenants are claiming hotel and restaurant costs for days before their employment was terminated and before there were allegations of harassment;
- The tenants incurred thousands of dollars in hotel and restaurant charges and hired a security firm to retrieve their cat but claim they could not afford to purchase a slide or chain lock to secure the doors that adjoined the landlord's office and clubhouse.
- The tenants waited more than three weeks before filing an Application for Dispute Resolution seeking a resolution to this dispute, during which time they incurred thousands of dollars in hotel, restaurant and other charges.
- The hotel statements included several restaurant charges at the hotel, including one for nearly $100.00, yet the tenants did not provide detailed bills to verify what was purchased and for how many guests were served.
- The tenants boarded their cat for weeks after gaining possession of their new rental unit without a reasonable explanation for doing so, yet they are seeking to recover all of those days from the landlord.
- The tenants are seeking to recover a refundable security deposit and pet deposit being held in trust for them by their new landlord.

While I find the landlord breached the Act in some ways, such as not preparing a written tenancy agreement and taking photographs of the tenants leaving the rental unit, I find insufficient evidence of other breaches as alleged by the tenants. For instance, I find insufficient evidence to support the tenants' position that the two storage rooms were provided to the tenants for their use exclusively under their terms of tenancy. Given the tenants were unable to retrieve or provide corroborating evidence; I make this finding based upon the best evidence provided to me, which is the advertisement for the manager's position. That advertisement made no mention of storage or storage rooms being provided to the tenants for their exclusive use.

I find the landlord's entry to check on the tenants' cat to be for humanitarian reasons and not tortious.

I accept the landlord's claim that disconnecting the phone service to the rental unit was inadvertent since their own fax line was also disconnected and the tenants did not inform the landlord of this until June 5, 2012. Given the tenants had access to the courtesy phone I reject their position that the lack of their own land line prohibited them from staying at the rental unit. I also find that I was provided insufficient evidence to show the tenants had a reason to fear the landlord and that there would be a need for them to call the police while they were at the property.

Although I have found some breaches of the Act on part of the landlord, due to the tenants' exaggerated claims, lack of credibility and lack of mitigation efforts I find I am unable to determine the tenants' entitlement to compensation from the landlord. Therefore, I dismiss the tenants' monetary claim against the landlord entirely.

Conclusion

The tenants' application has been dismissed. The tenants have been given liberty to reapply with respect to return of personal property.

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 1, 2012.

Residential Tenancy Branch