



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC

For the landlord – OPR, MNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on June 01, 2013 for a fixed term tenancy of one year; thereafter reverting to a month to month tenancy. Rent for this unit is \$1,000.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$475.00 on May 25, 2013. This tenant is the only tenant named on the tenancy agreement.

The landlord's application

The landlord's lawyer provided submissions on behalf of the landlord and submitted that the tenant failed to pay rent for June, July and August, 2016 to an amount of \$3,000.00. The tenant was first served a 10 Day Notice to End Tenancy for unpaid rent or utilities on June 28, 2016. A second 10 Day Notice to End Tenancy for unpaid rent or utilities was served on July 08, 2016. A third 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) was served on August 02, 2016 by posting it on the door of the rental unit.

The landlord has provided copies of these Notices in document evidence. The August Notice shows that there are rent arrears of \$3,000.00 for June, July and August and the Notice has an effective date of August 15, 2016. The landlord's lawyer submitted that the tenant has failed to pay the amount indicated on the Notice within five days of being deemed served the Notice. The landlord's lawyer submitted that as the tenant did not file an application to dispute either of the previous 10 Day Notices to End Tenancy for unpaid rent that were served to the tenant's agent by the request of the tenant; then the tenant must be deemed to have accepted the end of the tenancy and Ordered to vacate the rental unit.

Furthermore, the tenant has also failed to pay rent for September, 2016. The landlord seeks an Order of Possession effective as soon as possible.

The landlord seeks a Monetary Order to recover the outstanding rent for June, July and August of \$3,000.00 and requests to be permitted to amend their application to include the unpaid rent for September, 2016 of \$1,000.00. The landlord also seeks to recover the filing fee of \$100.00.

The tenant testified that he agreed he did not pay rent for June, July, August or September because on April 30, 2016 the landlord's boyfriend took the keys away from the tenant's roommate who was staying in the unit while the tenant was away attending to a family emergency. The landlord effectively locked the tenant and his roommate out of the unit on that date.

The tenant testified that he went away on March 19, 2016 to Toronto as his uncle was sick. The tenant did not return until July 30, 2016. The rent was paid by the tenant's girlfriend for May, 2016 even though they were locked out of the unit. The tenant appointed a friend to act as his agent and this agent filed an application for a hearing on May 24, 2016 to obtain an Order of Possession for the rental unit. A hearing was held on June 14, 2016. At that hearing the tenant received an Order of Possession for the rental unit. The tenant testified that his agent served this Order upon the landlord by registered mail. As the landlord had not provided an address for service of documents but did use the mailbox for the rental unit the landlord was served to that address. The tenant testified that his agent did not receive information from the landlord's lawyer asking that all correspondence be sent to their office until a week after they got the landlord's application for dispute Resolution.

The tenant called his witness. The tenant's witness confirmed he was acting as the tenant's agent. The witness testified that he did serve the landlord with the Order of Possession on June 21, 2016 and provided a tracking number for Canada Post.

The tenant's witness testified that he did get a letter saying not to contact the landlord directly, however the other letter sent by the landlord's lawyer was in the tenant's name and sent by registered mail and the tenant's witness was not able to pick that up. The witness testified that he was first aware that he should use the landlord's lawyer's address in the first week of July, 2016.

The landlord's lawyer asked the witness the following questions:

Questions	Witnesses response
Were you served in person by a process server on June 28, 2016 with a letter from the landlord's lawyer asking you to no longer contact the landlord directly	Yes I did get that letter
Did you get the letter from the landlord's lawyer sent on July 06, 2016 by registered mail and is this your signature on the Canada Post tracking system	Yes I may have got that letter too.

The tenant testified that at the last hearing the landlord stated that she had no intention of returning the keys to the tenant even if there was a decision made for her to do so. The landlord would not return the keys. After the tenant received an Order of Possession of the rental unit his agent did serve this upon the landlord and when the landlord would still not return the keys his agent went to Supreme court to enforce the Order and was told they could not do anything and did not issue a Writ of Possession.

The tenant testified that they also went to speak to the bailiffs but the bailiffs could not contact the landlord and suggested that the tenant changed the locks. The tenant therefore got a locksmith to change the locks and he regained entry to the unit on July 30, 2016. The tenant testified that he called the landlord's lawyer on August 01, 2016 and informed her that he was back in the unit and had changed the locks. The tenant testified that he offered the landlord a key. The tenant testified that as he had been

locked out of his unit for May, June and July he should not be required to pay rent for that unit. Furthermore, as he had paid rent for May then he should be allowed to apply that to rent for August. The tenant testified that therefore the only rent owed is for September, 2016.

The landlord testified that she never revived the tenant's Order of Possession by registered mail. The landlord agreed that she does use the address for the rental unit to receive mail but no notice was there to pick up a registered mail from Canada Post. The landlord testified that in the previous decision it stated:

"I have found that the tenancy is in effect of this date and the tenant has been provided an Order of Possession that may be served and enforce upon the landlord by the tenant and/or the tenant's agent JB. The landlord has been ordered to provide the tenant and/or JB the means of access (keys and fob) immediately upon receipt of the Order of Possession."

The landlord's lawyer asks the tenant the following questions:

Questions	Tenants response
You received the letter dated July 06, 2016 that you provided in evidence from the landlord's lawyer that stated all correspondence should be directed to the attention of the landlord's lawyer and did you understand this letter.	Yes I did receive it and did understand it.
Did the letter make mention of June and July's rent and copies of the previous Notices sent?	Yes it did
After you were informed to contact the landlord's lawyer's office why did you not pay your rent there?	Because the landlord had locked us out of the unit.

Did you try to enforce the Order of Possession dated June 14, 2016 and did you obtain a Writ of Possession.	My agent sent the Order to the landlord by registered mail
Did your belongings remain in the unit in June and July, 2016?	Yes
Is it your position that you should not have to pay rent even through your belongings are still in the unit	Yes, I had no access to remove my belongings
Why did you wait until July 30, 2016 to change the locks?	My agent was told to do this by the bailiffs
Did you make any attempt to contact the lawyer or serve the Order of Possession to the landlord via the lawyer after you received the July 06, 2016 letter?	The Order of Possession had already been sent by registered mail. I did not receive the letter dated June 24, 2016.
Did you read the affidavit from the process server that shows the letter was served to the tenant's agent on June 24, 2016 in person	Yes
Were you reminded at the previous hearing about your obligation to pay rent and did the previous Arbitrator tell you to pay rent	The other Arbitrator said that when I get possession back for the unit I have to start paying rent. I did not pay rent because I did not get possession back until July 30, 2016.

The landlord testified that at the previous hearing the Arbitrator said the tenant had to pay rent for June because it was due on the first of the month. The landlord testified that she did not lock the tenant out of the unit. When they went to the unit to do an inspection after written notice to do so was posted to the tenant's door on April 27, 2016

they knocked on the door and there was no answer. The landlord tried to unlock the door using her key but the locks had been changed. When they went into the unit they saw property damage and so they called the locksmith. The tenant's roommate JB appeared and surrendered the keys to the landlord's fiancé. The landlord testified that she was not present at that time. When the landlord's fiancé asked JB who he was JB said he had been given authority by the tenant to be there and was looking after the unit.

The landlord's lawyer submitted that when the landlord changed the locks it was in response to JB having changed the locks the night before the inspection. JB did ask the landlord for a key to the unit on or about June 21, 2016 after the previous hearing. As the landlord had not yet been served with the order of Possession at that time the landlord did not provide a key to JB as the tenant SS is the landlord's tenant not JB. The previous decision clearly states that once the landlord was served with the Order of Possession she must then give the tenant a key to the unit.

The tenant disputed the landlord's claim. The tenant testified that JB is his roommate. JB had told the tenant that when he was returning home he was putting his keys in the door and the landlord's boyfriends and another man came behind him and snatched the keys out of his hand. JB felt a fight would ensue so he left and went to work. JB then called the tenant to inform him what had happened and that the landlord had the building manager deactivate the fobs so neither the tenant or JB could access the building.

The landlord testified that she never received a Notice from Canada Post to pick up a registered mail. The registered mail must have been sent back to the tenant's agent and he could have then served the landlord by sending it to her lawyer's address as he had received the letter from the landlord's lawyer at this time or shortly after.

The landlord's lawyer submitted that it is the landlord's position that the Order of Possession was never served to the landlord and the tenant did not obtain a Writ of Possession from Supreme Court.

The landlord's lawyer asked the tenant if his text message sent to the landlord and provided in the landlord's evidence indicates that the tenant did receive the previous Notices to End Tenancy. The tenant responded yes.

The tenant's application

The tenant seeks to have the 10 Day Notices cancelled and referred to his testimony above concerning this.

The tenant seeks a Monetary Order for the following reasons:

The tenant testified that his dog was left at the unit to be cared for by his roommate JB while the tenant was away looking after his uncle. When the landlord locked JB out of the unit on April 30, 2016, JB had to take the tenant's dog to a friend of a friend's house to be looked after on May 01, 2016. This person charged the tenant \$35.00 a day for dog care. The tenant referred to a letter signed by this person showing he charged \$3,185.00 for 91 days for dog care.

The tenant testified that JB had been the tenant's roommate and the landlord was aware of this as she had met him on at least five occasions. When the landlord changed the locks JB had to live in his car for a week as his ID was locked in the unit. From May 07, 2016 JB was able to secure accommodation with a friend until July 25, 2016. JB paid \$60.00 a day for 80 days for this accommodation and the tenant seeks to recover \$4,800.00. The tenant referred to a letter written from the person with whom JB stayed.

The tenant testified that he had to pay \$1,400.00 to live in a hotel in Toronto when he went to look after his uncle. After his uncle passed away the tenant stayed for the funeral and to look after his uncle's affairs. The tenant referred to his hotel invoices and seeks to recover the following amounts:

April 28, to May 09, 2016 - \$987.62;

May 09, to May 12, 2016 - \$275.67;

May 16, to May 19, 2016 - \$264.42;

May 19, to May 21, 2016 - \$204.51

The tenant testified that when he left home on March 19 he arrived in Toronto and stayed with friends and family. He then had to get a hotel room on April 28, 2016. The tenant testified that his uncle passed away on April 15, 2016 and the funeral was held on April 22, 2016. On April 30, 2016 he was informed by his JB that the landlord had changed the locks. In May the tenant's agent filed an application for an Order of Possession and the hearing was held on June 14, 2016. The tenant testified that he had intended to return at the end of June but he did not have keys to his unit and as his agent was continuing to try to get something done through the Supreme Court he delayed his return until the end of July.

The tenant testified that he had sent text messages to the landlord several times about getting the keys to the unit but received no response. The tenant then sent a message to the landlord's lawyer who said they were going to file an application due to the 10 Day Notices. The tenant testified that as the landlord prevented the tenant's return to his unit he seeks to recover \$1,400.00 in hotel bills.

The tenant testified that he had to call a locksmith to gain entry to the unit. He told the locksmith that the landlord had locked him out and showed them his Order of Possession. The locksmith changed the locks and the tenant seeks to recover the charge for this work of \$260.00.

The landlord's lawyer asked the tenant the following questions:

Questions	Tenant's response
Who is JB and did he pay rent to live in the unit	JB is a friend and he didn't pay rent he just chipped in money when he could afford it

Is JB included on the lease agreement	No I am the only tenant on the agreement
You are claiming money for JB's alternative housing is JB going to testify today so he can be asked if he paid for alternative housing	No he is not appearing as I cannot contact him.
Did TJ write the letter concerning rent paid by JB or did you write and sign this letter	No the signature is not my handwriting
The signature appears to match your handwriting style as written on your previous application	I understand
Is TJ available to give testimony	No
Did you pay for JB's alternative housing	No he paid for it.
You were away mid-March to July 30 and residing elsewhere during that time and attending to family matters	Yes
Did you Order the locks changed on July 30, 2016	Yes
Were the previous locks changed by JB	Yes because the landlord was coming to do an inspection without notice
If JB changed the locks prior to this inspection why did you want till, July 30, 2016 to change them again	Because the bailiff told me I could change the locks
Did you arrange for BC Hydro to turn off the power to the unit	The power was in my girlfriend's name and when she left the country she had the power shut off. I had it turned back on again on June 16, 2016
Did you read the letter from BC Hydro that confirms that the power was disconnected on May 16, 2016	It was cut off while I was out of town as I was no longer in a relationship with my girlfriend.

The landlord's lawyer submitted that it is her believe that the tenant had no intention of moving back into the unit and there is insufficient evidence to show that the letters concerning the dog care and JB's alternative housing were written by these people who allegedly signed them or that any money was paid to either of these persons for dog care or alternative housing. Furthermore the landlord has no obligation to pay rent for alternative housing for the tenant's roommate.

The landlord's lawyer submitted that she believes the tenant wrote both of these letters and signed them as there is the same spelling mistake in both letters with the word welcome. The landlord's lawyer suggests the tenant's evidence is not credible and these letters have been manufactured by the tenant. The landlord asked that TJ the alleged person who signed one of these letters is contacted to give evidence. The Arbitrator called the number provided on this letter and there was no response and nothing in place to leave a voice message.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's application for a Monetary Order for unpaid rent; the landlord agreed that she did change the locks to the rental unit while the tenant was away on April 30, 2016. This prevented the tenant's access to the rental unit or the person who was staying in the unit. The landlord did not have an Order from this office to change the locks and while I accept the landlord's testimony that she only changed the locks because the tenant's roommate had changed them first before the landlord's inspection of the unit, the landlord should have provided a key to the unit to the tenant's roommate. While this roommate may have not be an authorised roommate by the landlord he still had the tenant's permission to reside in the unit and was there to look after the unit and the tenant's dog while the tenant was away.

If the landlord had concerns about this roommate the landlord could have filed an application to either change the locks or served the tenant with a One Month Notice to End Tenancy because the tenant had assigned or sublet the rental unit without the landlord's written permission or because the tenant had breached a material term of the tenancy agreement. The landlord's recourse then would have been to file an application for dispute resolution seeking an Order of Possession of the rental unit.

I find the tenant did pay rent for May for the rental unit despite the fact he did not have access to the unit.; however, the tenant agreed he did fail to pay rent for June, July, August and September and although he was not able to access his unit; under s. 26 of the *Act* a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

There is no evidence to show that the tenant had gained an Order to allow him to stop paying rent when he did not have access to his rental unit. There is no mention in the previous decision concerning the matter of the rent. Therefore, I have turned my mind to the landlord's act of taking possession of the rental unit without an Order from this office to do so and without obtaining a Writ of Possession to do so. I therefore conclude that at the time the June 28 10 Day Notice was served upon the tenant the tenant had been prevented from having possession of his unit and therefore would not owe rent for June, 2016.

The tenant did receive an Order of Possession of the rental unit on June 14, 2016 and this was sent to the tenant's agent. There is insufficient evidence to show when the tenant's agent obtained this Order of Possession but from the evidence before me neither the tenant nor his agent followed the correct steps to obtain possession of the rental unit. There is insufficient evidence that the landlord was served with the Order of Possession by registered mail. I have reviewed the Canada Post tracking information with the parties at the hearing and this is inconclusive that the landlord was served as the Canada Post information states that the reciprocate of the registered mail was not

known at that address provided and the registered mail was returned to the sender. There is no indication that a Notice card was left for the landlord. Therefore, I must conclude that the landlord was not served with the Order of Possession in a manner that would allow the landlord to act upon this and provide keys to the tenant or his agent as previously ordered to do on June 14, 2016.

The previous decision clearly states that the landlord must provide the tenant and /or JB the means of access (keys and fob) immediately upon receipt of the Order of Possession. S. 7 of the *Act* states that a party must take steps to mitigate or minimize the loss; I am of the opinion that once the registered mail was returned to the tenant's agent that any reasonable person would realize that the landlord had not been served this Order of Possession and would have then sent it to the landlord's lawyer's office as directed to do in the June 28, 2016 letter. This would have meant that the tenant or his agent could have received the keys to the unit had they taken steps to ensure service of the Order of Possession. I find the tenant could have regained possession of the rental unit and therefore would have been required under s. 26 of the *Act* to pay rent for July, 2016.

The tenant was also served a 10 Day Notice on July 08, 2016 which the tenant did not dispute. Based solely on that Notice the tenancy should have ended on the effective date of that Notice pursuant to s .46(5) of the *Act*. As the tenant did eventually take back possession of the rental unit on July 30, 2016 by changing the locks even though ordered not to do so, then rent would have been due for August, 2016. even though the tenant had paid rent for May and could not access the unit the tenant should have filed an application at that time to discuss the reasons why he felt he was entitled to recover rent for May, 2016. The tenant is not entitled to just withhold the rent.

Further to this I find the tenant agreed he withheld rent for September, 2016. Based on the above I find the landlord is entitled to an Order of Possession of the rental unit pursuant to s. 55 of the *Act* as the landlord has sufficient evidence that there is

outstanding rent and that the tenant did not dispute the 10 Day Notice issued on July 08, 2016.

With regard to the landlord's application to recover unpaid rent. I am satisfied that the tenant did not pay rent for June, July, August and September, 2016; however, I find as the landlord unlawfully locked the tenant out of the rental unit and prevented the tenant or his roommate access to the rental unit at least until the decision was made on June 14, 2016 then the rent paid by the tenant for May, 2016 may now be applied to the rent for July, 2016 as stated above had the tenant acted in a timely manner he could have mitigated the loss by taking action to serve and enforce the Order of Possession upon the landlord and therefore moved back into the unit at the beginning of July, 2016.

I therefore find that this leaves the matter of rent for August and September, 2016. The tenant agreed these rents were not paid and although the tenant argued that he should not be liable for July's rent and that rent for May should cover rent for August I am not persuaded by the tenant's arguments that this is the case. Consequently, I find the landlord is entitled to recover rent for August and September, 2016 of **\$2,000.00**.

As the landlord's application has some merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*.

With regard to the tenant's application to cancel the Notice to End Tenancy; as I have found in favor of the landlord's application for an Order of Possession then the tenant's application to cancel the Notice is dismissed. The Notice's issued in July and August remain in force and effect.

With regard to the tenant's application for a Monetary Order for money owed or compensation for damage or loss; I have dealt with each item individually below:

Dog care of \$3,185.00 - The tenant submitted that because the landlord locked his roommate out of the unit that his roommate had to find dog care for the tenant's dog

while the tenant was away. The evidence from the tenant suggests that he paid dog care for 91 days from May 01 to July 30, 2016. In addressing this I find the landlord did lock the tenant and the tenant's roommate, who was caring for the tenant's dog, out of the unit on April 30, 2016. It is therefore likely that dog care would have to be found for the tenant's dog; however, I am not satisfied that the letter provided in evidence by the tenant is a legitimate letter from the person who the tenant testified took care of his dog. The tenant has provided insufficient evidence to show that this person CB was paid \$3,185.00 to take care of his dog. The tenant gave testimony that he did not write these letters. The landlord's lawyer points out that there is the same misspelling of a word in both this letter and the letter for alternative accommodation for the tenant's roommate. I have considered both letters and find the content of these letters if written by two separate people are too similar in content including the way the amount paid is written and the misspelt word. I also find that although I am not a handwriting expert, there are similarities between the handwriting for the signature on the other letter. At the request of the parties I called the number provided on this letter to include that person as a witness but there was no answer and no way to leave a message. The answerphone did not indicate the person's name. As I have serious doubts as to the authenticity of this letter I find without corroborating evidence from the tenant that he paid a third party the sum of \$3,185.00 for dog care; that this section of the tenant's application is dismissed.

Alternative housing for roommate - \$4,800.00 – I find that as this person JB was not a tenant of the rental unit and that the tenant did not have written authorisation to allow a roommate to reside in the unit, that the landlord has no obligation under the Act to provide alternative housing costs for that roommate. Furthermore, the tenant testified that his roommate paid for his own alternative housing and therefore there is no loss suffered by the tenant. As I also have serious doubts about the authenticity of the letter provided from the party who claims to have offered the roommate housing then I must dismiss this section of the tenant's application.

Hotel cost for the tenant - \$1,400.00 – the tenant agreed that he had gone to Toronto to care for his uncle. The tenant also agreed that he stayed in Toronto for his uncle's funeral after he passed away and then continued to stay to sort out his uncles affairs. I am not satisfied from the evidence before me that the tenant suffered a loss in having to pay for hotel costs while he was in Toronto as he would have had to pay these costs even if the landlord had not changed the locks of the rental unit. Had the tenant returned to the province after receiving the Order of Possession the tenant could have dealt with this in a timely manner and obtained possession of the rental unit. I am not persuaded by the tenant's arguments that he intended to return at the end of June but could not do so as he had nowhere to live. At that time the tenant had in his possession the Order of Possession from the previous hearing and this could have been served upon the landlord and enforcement action taken to obtain a Writ of Possession. As the tenant did not mitigate the loss and instead left this up to someone he appointed as an agent who clearly did not follow the correct procedures to serve the landlord at her lawyer's office once informed of this and failed to obtain a Writ of Possession from Supreme Court then the tenant must bear the cost for all his hotel charges. This section of the tenant's claim is dismissed.

Locksmith - \$260.00 – The landlord was ordered to return the keys to the tenant and/or JB upon receipt of the Order of Possession. As the tenant failed to serve the landlord and the presumption of service was rebutted by the landlord's lawyer based on the information provided by the Canada Post tracking information, I find the landlord was not served the Order of Possession. Furthermore, the tenant or his agent did not attempt to re-serve this Order of Possession to the landlord via her lawyer's office as instructed to do. Consequently, had the tenant or his agent done so, then it is likely the landlord would have provided the keys to the unit as ordered to do and the tenant would not have had to engage the services of a locksmith to affect entry to the unit. The tenant was ordered not to change the locks at the previous hearing but did so anyway. I therefore find the tenant's claim to recover the locksmith's fees are dismissed

Conclusion

The landlord has been issued an Order of Possession effective on **September 30, 2016** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,100.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant's application is dismissed in its entirety 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: September 26, 2016

Residential Tenancy Branch