Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes AAT, CNC, CNR, LAT, LRE, MNDCT, OLC, OPT, PSF, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests, pursuant to section 70;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), pursuant to section 46;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an Order of Possession to the rental unit, pursuant to section 54;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlord to perform repairs to the rental unit, pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The "first hearing" on August 17, 2018 lasted approximately 30 minutes and the "second hearing" on October 15, 2018 lasted approximately 119 minutes.
The landlord's two agents, "landlord MC" and "landlord SK" attended both hearings. The "tenant's lawyer EP" attended the first hearing only. The tenant and the tenant's lawyer PS ("tenant's lawyer") attended the second hearing only. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the first hearing, the tenant's lawyer EP confirmed that she had permission to speak on behalf of the tenant. At the second hearing, the tenant confirmed that his lawyer had permission to speak on his behalf. At both hearings, landlord MC confirmed that he was the property manager and building coordinator and landlord SK confirmed that he was the property manager, both employed by the landlord

company named in this application. Both landlord agents confirmed that they had permission to speak on the landlord's company's behalf at both hearings.

At both hearings, the tenant's lawyer EP and the tenant's lawyer confirmed that the tenant had vacated the rental unit. At the second hearing, the tenant's lawyer confirmed that the only relief the tenant would be seeking was the monetary order for $10,000.00. He confirmed that the tenant was not seeking any other relief in his application. Accordingly, I notified the tenant's lawyer that the remainder of the tenant's application was dismissed without leave to reapply.

All testimony and submissions referenced below were made at the second hearing, unless specifically noted below that it was made at the first hearing.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on August 17, 2018 was adjourned because the tenant was unable to attend the hearing and the landlord consented to the adjournment. By way of my interim decision, dated August 17, 2018, I adjourned the tenant's application to the second hearing date of October 15, 2018. At the first hearing, I did not provide any evidence directions to the parties.

At both hearings, landlord MC confirmed receipt of the tenant's application for dispute resolution hearing package. At the first hearing, the tenant's lawyer EP confirmed receipt of the landlord's written evidence package and at the second hearing, the tenant's lawyer confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

At the first hearing, I had not received the landlord's written evidence package and asked the landlord to resubmit it to the Residential Tenancy Branch ("RTB") after the first hearing. The landlord did so and I received the evidence on August 20, 2018, just three days after the first hearing date, so I considered it at the hearing and in my decision, as noted to both parties during the second hearing.

After the first hearing and prior to the second hearing, the tenant submitted late written evidence to the landlord. Landlord MC confirmed receipt of same, indicating another landlord agent had reviewed the evidence. The majority of the evidence was written submissions summarizing the tenant's case. I notified both parties at the second hearing, that I would consider the tenant's late evidence, even though it was submitted less than 14 days prior to the second hearing date, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*, because the landlord received it, reviewed it, and could not demonstrate any prejudice.

Preliminary Issue – Jurisdiction to hear Tenant's Application

At the second hearing, the landlord raised an issue with respect to transitional housing, indicating that the *Act* did not apply and the RTB had no jurisdiction over the tenant's application because it was excluded by section 4(f) of the *Act* since the tenant's rental unit was transitional housing. The tenant's lawyer disputed the landlord's claim, stating that the *Act* applied and the RTB had jurisdiction because it was not transitional housing.

Landlord MC testified that the tenant signed a tenancy agreement indicating it was transitional housing and the *Act* did not apply to this tenancy. He said that an addiction-free housing addendum was also signed by the tenant, confirming transitional housing that the tenant did not opt out from, that the landlord only offers tenancies up to three years and the tenant left before this time expired, that the tenant was encouraged to use a provincial public housing list, and there were previous decisions from the RTB with this landlord and other tenants that were found to be transitional housing.

Landlord SK indicated that the tenant was offered addiction, mental health and meal programs to become better independent, that the tenant chose not to use these services and could not be forced by the landlord, that the tenant signed multiple fixed term temporary tenancy agreements, and the Courts decided this was transitional housing when they ordered the landlord to provide the tenant shelter until July 10, 2018.

The tenant`s lawyer claimed that this was not transitional housing, as per the definition contained in the *Regulation*, as it was not temporary, and the tenant was not offered programs to assist him to become more independent. He claimed that the tenant lived in the rental unit for 2.5 years, signed multiple fixed term agreements with lapses in between where it was month-to-month, and there was no finality to the tenant's multiple tenancy agreements. He claimed that the rent remained the same, the tenant has been on the provincial public housing list for 4 years on his own accord not due to the landlord, and the tenant used the rental unit as his permanent address for mailing. He said that the Courts did not determine transitional housing at the hearing where it was ordered that the landlord provide the tenant with shelter until July 10, 2018; he stated that he spoke with his colleague lawyer who attended that hearing. He claimed that the landlord's meal programs were not consistent at the rental building and the landlord did not offer any other programs to the tenant or check up on him to see if they could assist him.

Section 4(f) of the *Act* provides that the *Act* does not apply to "living accommodation provided for emergency shelter or transitional housing."

Section 1(2) of the *Regulation* defines "transitional housing" as the following:

> *(2) For the purposes of section 4 (f) of the Act [what the Act does not apply to], "transitional housing" means living accommodation that is provided*
>
> > *(a) on a temporary basis,*
> >
> > *(b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and*
> >
> > *(c) together with programs intended to assist tenants to become better able to live independently.*

As noted to both parties during the second hearing, I am not bound by decisions made by other Arbitrators in different tenancies. Both parties provided copies of previous decisions made by other Arbitrators in different tenancies. I must make a decision regarding this tenant and this tenancy as it relates to this landlord.

I find that the Courts did not determine transitional housing with respect to this tenancy, as the landlord provided no documentary proof of same, only an order for the landlord to provide the tenant with shelter

until July 10, 2018. The tenant's lawyer affirmed that no determination was made by the Court, according to his lawyer colleague who attended the above hearing in Court, regarding transitional housing.

It is clear from the word "transition" that the meaning indicates a temporary state between movement from one point to another. Such housing in the present context then implies that the accommodation is temporary and time limited or an intermediate step between homeless or at risk of being homeless and being permanently housed. A key determinant of transitional housing therefore would be the length of tenancy offered by the housing provider and the provision of assistance to move to permanent housing. In the present case, the tenant lived at the rental unit for just over 2.5 years. Even though the tenant signed multiple tenancy agreements for different fixed term tenancies, there were lapses in between where no agreement was signed and it became a month-to-month tenancy. There was no ultimate end date given to the tenant, for when he had to move.

The tenant did not dispute that the landlord received funding as per section 1(2)(b) of the *Regulation*, which landlord SK confirmed at the second hearing.

I find that the landlord failed to show that it offered programs to this tenant for him to become better able to live independently, as required by section 1(2)(c) of the *Regulation*. The only consistent program referenced by both parties was the breakfast and dinner programs, which the landlord said was dependent on funding. The tenant denied benefitting from this program. I do not find meal programs to help the tenant to better live independently. Landlord SK referenced programs to assist with mental health and addiction issues but the tenant denied the availability and use of these programs. I find that the landlord was unable to provide specific details of these programs, documentary proof of same, or show the tenant's actual use of these programs.

Security and pet damage deposits were taken by the landlord for this tenancy. This is an indicator of a regular leased accommodation that would otherwise fall under the jurisdiction of the *Act*. Further, section 5 of the *Act* operates to prevent parties from contracting out of the *Act* and *Regulation*, as noted by the tenant's lawyer at the second hearing. I find that the intention of the tenancy agreement for this specific tenancy, was to avoid the *Act*, as it states specifically in the agreement that the *Act* does not apply. Given the above analysis of transitional housing, I find that the tenant's unit is not a transitional unit within the meaning of the *Act* and therefore the dispute between the parties falls within the *Act* and may be resolved through the application of the *Act*. Accordingly, I find that I have jurisdiction to hear this matter and I proceeded with the hearing and made a decision regarding the tenant's application on its merits.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at the second hearing, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 20, 2015 and ended on July 10, 2018. Monthly rent in the amount of $575.00 was payable on the first day of each month. A security deposit of $287.50 and a pet damage deposit of $287.50 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenant seeks a monetary order of $10,000.00. He seeks $1,853.00 for a reimbursement of stolen cash, $3,597.00 for reimbursement of lost and stolen personal belongings, and $4,550.00 for aggravated damages.

The tenant's lawyer stated that the entire contents of the tenant's rental unit were removed. He claimed that the landlord left the tenant's rental unit door unlocked on June 13, 2018, so a number of the tenant's personal belongings were stolen. He also said that the tenant was wrongfully evicted on June 22, 2018, which led to this RTB application and again on July 3, 2018, which led to a Supreme Court of British Columbia hearing, allowing the tenant access to his rental unit and the landlord's obligation to provide shelter to the tenant until July 10, 2018.

The tenant's lawyer explained that the tenant suffered aggravated damages of $4,550.00 as a result of the wrongful evictions and his room door being left unlocked. He stated that he did not submit medical records to the landlord for privacy and trust reasons but that the landlord was fully aware that the tenant was seeing a mental health worker regarding his post-traumatic stress disorder and bipolar disorders and that he suffered a negative emotional and psychological impact which required him to take medications. He referenced a letter from the tenant's outreach worker.

The tenant's lawyer maintained that the landlord cleared the tenant's rental unit, stored his belongings improperly, did not make an inventory of his belongings as required, and many items went missing, despite the few items that the tenant was able to retrieve from the landlord later. The tenant testified that he lost two phones valued at $996.00 and $796.00, for which he provided invoices for their leases. He claimed that he lost a laptop worth $699.00. He also said that he lost furniture and clothing worth $1,500.00, including a bed box spring and mattress worth $800.00. The tenant stated that he lost photographs, journals and memories that were not catalogued and could not be quantified. The tenant stated that he left with one suitcase of clothing, slept on his friend's couches, and was unable to replace his furniture, clothing and other belongings because he did not have the money. The tenant's lawyer claimed that it was difficult to prove the amount of the tenant's losses, aside from providing the market value of some items because the tenant did not catalogue or track the items in his rental unit before they were lost and stolen.

The tenant's lawyer claimed that because the landlord refused the tenant's rent cheque, he withdrew cash from his bank account in order to pay rent. He explained that the tenant had cash of $1,853.00 stolen from the tenant's rental unit when the landlord left the tenant's rental unit door unlocked on June 13, 2018.

The landlord disputes the tenant's claims. Landlord MC stated that the tenant failed to provide receipts to prove his losses. Landlord SK stated that the landlord fulfilled its obligation to store the tenant's items for 90 days and the tenant picked some of these items up. He indicated that the landlord has no use for the tenant's personal photographs and memories and the landlord did not throw these items away, as claimed by the tenant. He claimed that the tenant's rental unit was almost demolished, there was not

very much left when he vacated, and there were drugs and broken bed frames there. The landlord provided photographs of the tenant's rental unit showing its condition.

Landlord SK testified that the tenant had old cellular phones but was claiming for new high end phones with current 2018 prices, which were under lease, not ownership. He said that the landlord never left the tenant's rental unit door unlocked. He said that after the Court hearing on July 3, 2018, the tenant was given a key to access the rental unit in order to retrieve his belongings until July 10, 2018.

Analysis

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for $10,000.00 without leave to reapply. The landlord disputed the tenant's claims.

I find that the tenant failed to provide a proper breakdown for the $3,597.00 in lost and stolen personal belongings prior to the hearing. When I asked him for a breakdown during the hearing, he claimed he was seeking $699.00 for his laptop, $996.00 and $796.00 for his phones, and $1,500.00 for his furniture, clothing and other personal belongings. When I asked what furniture and clothing he lost, he only named his bed mattress and box spring of $800.00 but failed to mention any other items or their cost. He also failed to provide receipts to prove these claims. He only provided some invoices for the phones indicating they were under a lease, not that he had purchased them and owned them. I do not find comparative market value rates to be helpful and the tenant has not replaced these items.

I find that the tenant failed to provide sufficient documentary evidence to support his claim for aggravated damages of $4,550.00. The tenant's lawyer claimed that the tenant suffered an emotional and psychological impact as a result of the landlord's behaviour in wrongfully evicting him twice as well as leaving his rental unit unlocked, which the landlord denied. Yet, the tenant failed to provide medical records to support his claim of emotional and psychological suffering as a result of the landlord's behaviour. His lawyer claimed that the records were private and the tenant did not want the landlord to have access to them, despite the fact that he said the landlord was well aware of the tenant's medical conditions, including bipolar disorder, post-traumatic stress disorder, and the fact that the tenant was working with a mental health worker. I do not find the tenant's letter from an outreach worker to be sufficient to show the causation and effect of the landlord's alleged behaviour against the tenant.

I find that the tenant failed to provide sufficient documentary evidence for his loss of $1,853.00 in stolen cash, which he said was the result of the landlord leaving his rental unit unlocked. This was disputed by the landlord. The tenant's lawyer acknowledged that he could have provided a bank statement to show that the tenant withdrew this money from his bank account, but he failed to do so. The tenant had since June 22, 2018, when he filed his application, until the second hearing date of October 15, 2018, almost four months, to provide this evidence but failed to do so.

Conclusion

The tenant's entire application is dismissed 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: October 24, 2018

Residential Tenancy Branch