



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MNDC

Introduction

This hearing was convened upon the application of the tenant seeking a monetary award of \$9,954.89.

Both parties appeared and gave evidence under oath.

Issue

Is the tenant entitled to a monetary award?

Background Summary

This tenancy began approximately 8 and one half years ago. The rent is \$325.00 per month and the tenant paid a security deposit of \$180.00 at the start of the tenancy although neither the landlord nor the tenant can remember the exact date the sum was paid.

The tenant says that on April 1, 2008 at about 10:30 a.m. he was woken by the landlord, _____. The tenant says _____ was telling him to "get out". The tenant says he was still waking up and not sure why _____ was asking him to leave but, as a respectful person, the tenant obeyed and turned over his keys to the landlord and left. The tenant said he assumed he was asked to leave because the landlord was going to use pesticides and the tenant has a chemical sensitivity.

Believing this the tenant said he did not return to the rental unit for a few days. The tenant says he returned on April 4, 2008 but was unable to get in touch with the landlord. He returned again two days later and was able to speak with the landlord. The tenant says the landlord had the tenant's cameras in his hands and he offered them to the tenant. The landlord then walked the tenant to his suite and it was empty except for some empty cardboard boxes, a plastic tool chest and a lamp cord. The tenant said there were some of the landlord's furnishings including the landlord's bedrails, headboard and footboard but no mattress. When the tenant asked where everything was the landlord advised the tenant it had all been thrown out.

The tenant said the landlord asked him if he was still interested in renting the room and the tenant said "not after this". The tenant says the landlord then said "Then can I rent the room" and the tenant says he responded that "It's obviously not up to me". The tenant says he left the rental unit that day and never returned.

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The tenant says he is a computer enthusiast and spent a great deal of time in this pastime. The tenant said in the course of this activity he acquired a lot of computer related goods, systems, upgrades and accessories which were all missing.

The tenant produced witnesses who said the tenant's belongings, in particular his computer, were in good working operation. One witness had serviced the tenant's system a number of times and gave testimony to the tenant's interest in computers and his wealth of computer equipment. The witness also testified that there was no evidence of bed bugs in any of the systems. Another witness testified that the tenant had brought his computer over to his home on numerous occasions and there was no evidence of bed bugs. Another witness testified that the tenant brought his computer for use at a volunteer organization and they too noted no problems with bed bugs.

To demonstrate the sums expended to purchase the items the tenant says are now missing the tenant supplied his banking record activities. The tenant also supplied photographs of some of his belongings and a list of the missing items. Where the tenant has estimated the tenant says he obtained his estimates from a Mills Basic Office Supplies catalogue and Value Village prices. The tenant said some of his tools were returned to him by the landlord since the filing of this application and the tenant has crossed those items have been crossed off the list.

The tenant seeks the following sums

Items with bank activity record evidence	
1 computer mother board	\$100.00
1 computer mother board	159.60
50 pack of blank CDs	34.16
1 memory strip	47.88
1 memory stick	99.00
1 memory stick	85.45
2 Microsoft mouse devices	56.99
1 memory strip	45.60
1 power cord	13.67
1 small hard drive 30 gigs	49.01
1 CPU & mother board combination	170.99
1 DVD burner with case	130.95
1 printer	156.78
1 large laptop drive 80 gigs	97.18
WIFI antenna kit	55.99
CPU fan and heat sink	33.49
General Computer Parts	11.20
Soldering Supply	25.06
General computer supply	16.79

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Subtotal	\$1389.79
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Items with estimated costs from Mills Basic Office Supplies and Value Village prices	
1 laptop 1.8 gigahertz CPU with 2 gigs of RAM and 80 gig hard drive	\$1,500.00
1 Commodore TV monitor	50.00
1 used 17" monitor flat screen – no name	30.00
1 used Sony 17" monitor	50.00
1 external hard drive 200 gigs case included	300.00
1 external DVD writer case included	100.00
1 WIFI thumb drive	60.00
1 WIFI hub	75.00
1 computer tower, TV Tuner card, 128 meg Video card	600.00
1 used leather computer case	25.00
General installation hardware	15.70
1 large ½ height hard drives	116.72
1 large hard drive	126.39
1 power supply 50 watt	58.49
1 sound system	73.45
1 gas powered soldering gun	55.63
2 laptop external speakers	38.25
1 small hard drive 1 laptop 80 gig	124.30
1 memory strip for lap top	50.00
1 memory strip for lap top	50.00
1 power supply and case	124.25
General computer parts	13.56
Blank DVDs	19.09
Flexible Keyboard	67.75
2 s 50 pack Blank CDs sale price	45.10
Keyboard parts for IBM Laptop	40.00
1 thumb drive	90.00
1 small laptop drive 60 gigs	46.16
1 used Microsoft Mouse	79.00
1 new keyboard	75.00
1 cordless key board with mouse	75.00
1 convertible hand trolley	80.00
1 Radio Shack dual bridge power supply	100.00
1 used volt meter	60.00
1 large air conditioner	300.00
3 metallic power bars	120.00
12 shirts	60.00

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6 pairs of blue jeans	60.00
1 brown leather bomber style _____et	20.00
2 rain coats	40.00
3 sweat shirts	21.00
2 wool blankets	80.00
4 cotton and linen blankets	40.00
2 pillows	10.00
6 serving stainless steel flatware	15.00
12 glasses and 10 cups	22.00
6 plates	6.00
3 dish towels	3.00
3 large bath towels	21.00
1 used cloth covered rocking swivel chair	15.00
2 camper chairs still new, used once	14.00
Identification recovery costs: Birth Certificate; SIN Card; BC Drivers' Licence & Health Care Card	150.00
Approximately 100 photographs of deceased family members	3,000.00
Subtotal Total	\$8,410.84
Subtotal Brought Forward from above	\$1,389.79
Grand Total	\$9,800.63

The landlord said the rental unit and the tenant's goods were infested with bed bugs requiring a thorough treatment. The landlord says he believed the tenant abandoned the property when he handed over his keys. The landlord says he did not keep an inventory of the tenant's goods. The landlord says that because the infestation was so severe he was only able to salvage a few items which have been returned to the tenant. The landlord did not submit invoices for pest control treatments because the landlord said he was unable to retain a company do to the work and he had to do the work himself. The landlord says the tenant's goods were "garbage and junk" and that he suffered from "stress and post-traumatic effect" as a result of having to deal with this issue.

In his written submissions the landlord says he is asking for compensation of \$19,712.44 however the landlord has not filed an application for dispute resolution seeking this sum.

Analysis

While the tenant disagrees, the landlord submits that the tenant abandoned the rental unit. The evidence of the landlord is that after the tenant left the premises the landlord removed the tenant's belongings. The Residential Tenancy Act Regulation sets out the procedures for dealing with abandoned personal property:

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph

(1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

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(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Disposal of personal property

29 (1) For the purposes of this section, "**administrator**" has the same meaning as in the *Unclaimed Property Act*.

(2) If a landlord has complied with section 25 [*landlord's obligations*], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

- (a) a person referred to in section 27 (2) [*person entitled to notice of disposition*] who has been given a notice as provided in that section has taken or demanded possession of the property,
- (b) a person who holds a security interest in the property has taken or demanded possession of the property, or
- (c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.

(3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to

- (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing, storing, advertising and disposing of the property, and
 - (ii) a search required to comply with section 27 [*notice of disposition*], and
- (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.

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(5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.

Landlord's duty of care

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

Findings

The evidence of both parties is that the tenant left the rental unit at the request of the landlord. Both parties also agree that when the tenant returned a few days later all of his goods and personal belongings had been removed from the rental unit. The landlord testified that he retained some of the tenant's goods and those goods have now been returned to the tenant. The landlord's evidence is that the items that were not retained or stored in accordance with the Act were either garbage and/or junk and infested with bed bugs. While the tenant says that he believed the landlord was going to spray and that is why the landlord wanted him to leave the rental building the tenant says he is unaware of a bed bug infestation in his own rental unit. Further, while the landlord testified that he had to undertake steps to rid the rental unit of the infestation the landlord has supplied insufficient evidence to support his statements such as invoices for pesticides purchased or other treatments undertaken. And in the face of this lack of support evidence the tenant called witnesses who testified that the computer equipment, in particular, that was not returned by the landlord was in good condition and not infested with bed bugs. Therefore I find there is insufficient evidence to make a finding that the infestation was such that the proper storage of the property as set out in the Act would have been unsanitary or unsafe. I therefore find that the landlord is responsible for compensating the tenant for the loss of his goods.

I will now turn my attention to the value of the tenant's goods. I find that, for the most part, the tenant has supplied sufficient evidence to prove the goods that he owned. I will award \$1,379.89 for the goods documented by bank activity records. With respect to the estimates supplied, I will award \$1,500.00 finding that the estimates do not allow for depreciation of the value of the goods and finding insufficient evidence to support that the lost photographs were valued at \$3,000.00.

Total award payable by the landlord to the tenant is \$2,879.89.