



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Code

MNDC

Introduction

This hearing dealt with an application by the tenant seeking a monetary claim related to loss or damage resulting from a breach of the tenancy agreement or *Act* by the landlord. Both parties appeared for the hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

Issue to be Determined

Has the tenant established a monetary claim related to the loss of her personal possessions?

Background and Evidence

This tenancy began October 1, 2005 for the approximate monthly rent of \$650.00 and a \$325.00 security deposit. The rent and deposit related to this tenancy are approximate because the landlord and tenant no longer have any written records of the tenancy. The tenancy ended on approximately May 31, 2008.

The tenant stated that on March 25, 2007 she went to her storage locker, which was located on the same floor of her rental unit in the former garbage chute room, and discovered that most of her possessions had been removed. The tenant indicated that the lock on the door appeared intact and that it did not appear to be a break in. She contacted the police and according to the tenant, the police also believed that the room had not been broken into.

The tenant discussed the issue with the landlord's agent on March 26, 2007 and it was determined that the resident manager of the rental building had decided to take over this space and had removed the majority of the tenant's possessions and thrown them away. The tenant stated that she was not provided with any written notice of the landlord's intent to remove her storage room.

The tenant stated that she was severely traumatized by the situation and felt very threatened by the individual involved. The tenant indicated that the invasion of privacy she felt extended to her apartment and having the individual around since he was the resident manager. The tenant stated that this situation aggravated her pre-existing medical conditions and she had a long period where she confined herself to her apartment and would not leave. Another employee of the landlord addressed the situation about three month's later by having the resident manager, who disposed of the tenant's belongings, relocated to another building.

The tenant stated that in addition to the mental stress and trauma suffered, she also lost the following belongings:

Swiffer mop	\$25.00
Handmade wooden toilet paper holder	\$20.00
VHS movie rack	\$20.00
Three sets of blinds	\$45.00
Golf putter	\$175.00
Paintings from her children (3 or 4)	Emotional/personal value

The tenant's representative argued that the tenant's right to quiet enjoyment and exclusive possession had been breached by the landlord and as a result the tenant suffered damage and loss. The tenant's representative also argued that there is case law supporting the compensation for items with sentimental value. The tenant's representative submitted that the tenant seeks \$1,000.00 in damages due to the landlord's breach of the tenancy agreement and *Act*.

The landlord was unable to make any significant submissions in response to the tenant's evidence. The landlord stated that the former resident manager and landlord's representative at the main office, who were personally involved in the alleged circumstances, were no longer employed by the landlord. The landlord also stated that the former rental building had been sold and the landlord no longer had any access to the files. However, the landlord did submit that she believed the amount being claimed by the tenant was excessive.

Analysis

Section 6 of the *Act* states that the rights and obligations established under the *Act* are enforceable between a landlord and tenant under the tenancy agreement. Section 7 states that if a landlord or a tenant fails to comply with the *Act*, regulation or the tenancy agreement, the offending party must compensate the other party for any damage or loss that occurs.

In the circumstances before me I accept the tenant's evidence that the landlord, or an agent of the landlord, entered her storage room without any notice or authorization and disposed of some of her personal belongings. The landlord did not provide any evidence to counter or call into question the tenant's version of events. I am accepting the tenant's evidence of the items which were lost.

Section 28 provides for a tenant's right to quiet enjoyment, including the exclusive possession of the rental unit. I find that this exclusive possession also applied to the tenant's storage room. Section 29 provides that a landlord has restricted access to the rental unit and must not infringe on a tenant's exclusive possession of the rental unit without reasonable reasons and with sufficient written notice.

I find that the due to the landlord's breach of the *Act*, the landlord is liable for the damage suffered by the tenant through the loss of her possessions. However, I do not

accept that the tenant suffered any loss related to aggravation of her pre-existing condition. The tenant provided no evidence to support this argument, such as a medical opinion or receipts showing an increase in use of medications.

Further, although the tenant lost personal possessions, she is only entitled to a reasonable assessment of the market value of the possessions. The Residential Tenancy Policy Guideline Manual, section 16, also provides that items of great sentimental value can also be assessed for value on the basis of the size and scope of the collection and the intrinsic value to the tenant.

Taking these principals in mind, I find that the tenant is entitled to compensation due to the landlord's breach of the *Act* and tenancy agreement for the sum of \$400.00 comprised of the following:

1. I accept the following market values for the swiffer mop, wooden toilet roll holder, VHS video holder, three blinds and golf putter as: \$25.00, \$20.00, \$20.00, \$45.00, & \$90.00 for a total of \$200.00 and
2. I accept the tenant has experienced a loss related to the disposal of the paintings from her children during their childhood. However, I also find that while there is a significant intrinsic value to the tenant, the size and scope of the loss of three or four paintings is not significant. I find that the sum of \$200.00 compensates the tenant for this loss.

Conclusion

I accept the tenant's application and award the tenant a monetary Order for the sum of **\$400.00** related to loss experienced as a result of a breach of the tenancy agreement and *Act* by the landlord. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated May 29, 2009.

Dispute Resolution Officer