



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and an Order for the landlord to return the tenants personal belongings.

The tenant served the landlord by April 18, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The landlords confirmed they had received the hearing package.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be decided

- Is the tenant entitled to a Monetary Order for Loss or damage under the *Act*?
- Should the landlord return all of the tenants' personal belongings?

Background and Evidence

The tenant moved from the property on December 08, 2008 after an Order of Possession was issued to the landlord on November 17, 2008. The landlord extended the time allowed for the tenant to move out of the rental property on two separate occasions to enable the tenant to remove all her belongings. The tenant testifies that she was unable at that time to move the large items of furniture and asked the landlords to store them for 30 days. The tenant testifies that when she contacted the landlord on January 08, 2009 about her belongings. She left a message with someone in the office and the landlords' field representative called her back on January 12, 2009 to tell her her belongings had been disposed off.

The landlord's office was closed during the Christmas period and the landlord testifies that when the office re-opened in January they entered the tenants' suite and found a large amount of her possessions still in place. They testify that the tenant had told them that she had removed most of her belongings. They found the rental unit in a mess with clothes and shoes strewn everywhere and some of the furniture appeared to be broken.

The landlords witness testifies that on closer inspection of the box spring bed it was found to have a bed bug infestation and therefore was unsanitary to store. The landlord has provided evidence from a pest control company about the bedbug infestation. They testify that the whole building has treated when the tenant lived there and as the tenant did not allow the pest control workers to retreat her unit after the initial treatment the bedbugs have returned. The witness testifies that when they tried to pick up the futon it fell apart in their hands. Many of the other furniture items were damaged. The landlord's believed that the items left behind by the tenant did not have a collective value of over \$500.00 and therefore they were disposed of. The landlord did store the tenants'

wheelchair and medical boot and have a bath bench for her to collect at her earliest opportunity.

The tenant disputes the landlords' testimony that she did not let the pest control company back into her unit to re-treat the unit. She testifies that the company told her, her unit was clear of bedbugs. The tenant disputes the landlords statement that her belongs were worth under \$500.00. She has put a value on her them of \$4975.00. When questioned, the tenants gave information about her belongings she is claiming for:

- 1 toilet bar value \$50.00
- 1 entertainment unit value \$450.00 (unsure of age)
- 1 entertainment unit value \$500.00 (unsure of age)
- 1 bedroom suite value \$800.00 (13 years old)
- 1 queen box spring value \$400.00 (11 years old)
- 1 steel bed frame value (\$100.00 (11years old)
- 1 weight bar \$45.00 value (15 years old)
- 1 redwood six drawer dresser \$300.00 value (6 years old)
- 1 single metal bed frame value \$40.00 (11 years old)
- 1 electric toy truck value \$50.00 (2 years old)
- 3 plastic shelves value \$15.00 (15 years old)
- Assorted clothes and footwear value \$2,000.00 (Some approximately 5 years old)
- 2 lawn chairs and table value \$25.00 (7 years old)

The tenant testifies that some items were broken but repairable.

Analysis

Test for damage or loss.

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted any evidence to support their claim of \$4975.00. By the tenants own admission the furniture was old and this would therefore substantially reduce its value. The tenant has not provided any evidence as to the amount of items left in the unit and condition and value.

The tenant is unable to prove that the landlords acted in direct contravention of the Act by disposing of most of her belongings as the landlord did store it in the rental unit from the date the tenant moved out in December, 2008 until January 12, 2009 as per the tenants' request. The landlords believed that the belongings not infested with bedbugs were not worth over \$500.00. The rest of the belongings would have been unsanitary to store pursuant to s. 25(2) of the regulations.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlords continue to store the tenants' wheel chair and medical boot and have a bath bench for her. They have been waiting for the tenant to arrange to collect these items. It is not the duty of the landlord to send these items to the tenant. Based on the above, I dismiss the tenants claim for the landlord to return her belongings and suggest she contacts them to arrange a mutually convenient time to collect the remainder of her belongings.

Due to a lack of evidence provided by the tenant and due to the age of the items involved I dismiss the tenants claim without leave to reapply.

Conclusion

The tenants claim 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: June 11, 2009.

Dispute Resolution Officer