

# Dispute Resolution Services

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

## Decision

Dispute Codes: MNDC

### Introduction

This hearing dealt with the tenant's application for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

### Issue(s) to be Decided

Did the landlord have the right to treat the rental unit as abandoned?

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The rental unit is an apartment for which the tenant was paying \$550.00 per month in rent. The tenant testified that on October 14, 2008 she left the rental unit, intending to be away for approximately one week and that she owed \$175.00 in rent for the month of September and \$175.00 in rent for the month of October. The tenant testified that on October 17 she received a telephone call from another resident of the building who told her that a third tenant, Donny, had moved into the rental unit and that the landlord was giving away her belongings. The tenant testified that she sent her sons to the rental unit. The tenant's sons submitted unsworn statements in which they both describe arriving at the rental unit on October 17 and discovering Donny sleeping on their mother's couch. The statements go on to say that Donny told them he was the manager and that he now lived in the rental unit. The tenant's sons stated that they searched the rental unit and discovered that other than the sofa, their mother's belongings were missing. The tenant testified that her television, a painting and a few kitchen items were discovered in another apartment and she was able to retrieve those items.

In his statement, the tenant's son M.B.G. stated that he rented a hotel room for his mother as she did not have her own identification. An invoice for the hotel was

provided, showing that \$1,249.63 was spent on a hotel room for October 17 – 28 inclusive.

The tenant testified that with the exception of her television, painting and a few kitchen items, she lost most of her belongings including her identification when the landlord cleared out the rental unit. The tenant provided an itemized list of her belongings and estimated their value at the time of loss at \$5,744.00. The tenant also seeks recovery of \$1,227.00 of her hotel costs, \$65.00 as the cost to replace her identification, \$1,275.00 as the cost of the rent and security deposit she paid at a new apartment for the month of November, \$2,500.00 for loss of safety and security, \$2,500.00 for loss of peace and quiet enjoyment and \$1,500.00 for emotional and mental distress for a total claim of \$14,811.00.

The landlord testified that the last time he saw the tenant at the rental unit was in late September, although the landlord stated that he believes his wife may have seen the tenant in the rental unit in October. The landlord testified that on October 17 he went to inspect the rental unit and discovered that the back door of the rental unit was open and the rental unit was in disarray. The landlord further testified that while some of the tenant's belongings such as her mattress, couch, clothing and dishes were there, he believed the tenant had abandoned the rental unit. The landlord claimed that he waited until the end of October hoping that the tenant would contact him, but when he didn't hear from her, Donny helped him clean the unit and the landlord permitted Donny to move in. The landlord insisted that the items left in the rental unit had no value and testified that he threw the items away at the end of October. The landlord testified that several people witnessed the condition of the rental unit when he found it on October 17, but the landlord did not submit statements from those witnesses or request that they be called to give oral testimony. The landlord insisted that the tenant had a number of other people living with her in the rental unit. The tenant denied that anyone lived with her in the rental unit and testified that no one stayed in the unit when she left on October 14. The landlord further testified that he had witnessed the tenant's son removing some of her belongings and stated that the tenant's son had told him that the tenant would be moving to Surrey.

### Analysis

Part 5 of the Residential Tenancy Regulation addresses when personal property may be considered abandoned. Section 24 provides as follows.

**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.

Section 25 of the Regulation provides as follows.

**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.

(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).

I find that the landlord did not have reason to believe that the tenant had abandoned the property. Regardless of whether the tenant had paid rent for the month of October, the landlord acknowledged that he had at least seen the tenant at the end of September and that his wife had probably seen her in October, so a continuous period of one month had not passed in which the tenant had not ordinarily occupied the rental unit. The landlord had not received written notice that the tenant was vacating the rental unit and there is no indication that there existed circumstances under which the landlord should have expected the tenant not to return. I prefer the evidence of the tenant over that of the landlord with respect to the date on which the landlord removed her belongings. The tenant's testimony combined with the statements of her sons have persuaded me that the landlord removed her belongings on or before October 17. Although the landlord claimed to have witnesses, he chose not to call those witnesses to testify or to submit statements from them. I note that even if the landlord had considered the tenant's property have been abandoned, he was obligated under section 25 to create an inventory of that property and to store it for at least 60 days. I find that the landlord failed in his obligation to provide the rental unit to the tenant for her exclusive use and enjoyment until such time as the tenancy had ended. I find that the landlord has not proven that other people were residing in the rental unit with the knowledge and authorization of the tenant.

I accept the tenant's testimony that all of the items listed with her application were removed by the landlord and I accept the stated value of those items as being reasonable. I award the tenant \$5,744.00 for the value of the items discarded by the landlord.

Because the landlord wrongfully ended the tenancy on October 17, I find that the

landlord must bear the cost of the tenant's hotel bill. I award the tenant \$1,227.00 for her hotel costs.

I find the tenant's claim for \$65.00 as the cost of replacing her identification to be reasonable and I award the tenant \$65.00.

I find that the landlord cannot be held responsible for the cost of the rent and security deposit for the apartment the tenant rented for the month of November and I dismiss that claim.

As for the remaining \$6,500.00 the tenant claims for loss of safety and security, loss of peace and quiet enjoyment and emotional and mental distress, I find that the landlord's egregious conduct in disposing of the tenant's belongings and surrendering control of the rental unit to another party caused the tenant to suffer loss of the quiet enjoyment of the rental unit as well as causing significant distress in having to replace what was lost. I find that \$1,100.00, which is the equivalent of two month's rent, will adequately compensate the tenant and I award the tenant that sum.

### Conclusion

In summary, the tenant has been successful in the following claims:

Value of personal belongings	\$5,744.00
Hotel costs	\$1,227.00
ID replacement	\$ 65.00
Loss of quiet enjoyment	\$1,100.00
<b>Total:</b>	<b>\$8,136.00</b>

I grant the tenant an order under section 67 for \$8,136.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 03, 2009.

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