



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for compensation for damages and loss of personal property and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony, to ask each other questions and to make submissions during the hearing.

Preliminary Matters

During the hearing an attempt was made by the Telus operator to reach the tenant's only witness. The operator was unable to reach the witness.

The landlord did not submit any evidence in response to this Application.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$4,537.15 in damages and loss of personal property?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant has claimed compensation for the loss of personal belongings that were removed from his rental unit and disposed of without his permission. The claim includes the following:

| | |
|--|-----------------|
| Registered mail | 8.44 |
| Extra storage boxes | 22.08 |
| Post office box – mail redirect | 102.59 |
| Maple Leaf storage receipts | 188.25 |
| Missed day of work due to fumigation of truck | 300.00 |
| Tri Cities Pest Detective – spray truck for bed bugs | 183.75 |
| Telus cancellation charge | 130.00 |
| Entertainment centre | 350.00 |
| Sony stereo | 150.00 |
| Stereo speakers | 400.00 |
| Computer | 350.00 |
| Printer | 150.00 |
| Scanner | 150.00 |
| Computer desk | 100.00 |
| Mattress and box spring | 200.00 |
| Microwave | 70.00 |
| Leather couch and loveseat | 650.00 |
| Telus modem and TV receiver | 230.00 |
| 20 inch Sony TV | 300.00 |
| Captive works satellite receiver | 150.00 |
| Magnavox bedroom TV | 200.00 |
| Ski boots | 80.00 |
| Total | 4,487.15 |
| Filing fee cost | 50.00 |

On June 30, 2009 the tenant informed the landlord of a bed bug infestation in his rental unit. The tenant had been bitten in the night and had discovered that the neighbouring unit was also infested with bed bugs. A July 21 2009, letter indicates that the tenant called the landlord on July 7 to enquire about treatment and was told his unit would be put on a list and would not be treated for another week. The unit, along with 4 others in the building, was treated on July 13, 2009.

By July 12 the tenant had removed most of his belongings and taken photographs of the items remaining in his rental unit, as he did not believe that the landlord was providing a vigorous response to the infestation. The photographs were submitted as evidence.

The tenant left his rental unit on July 13, 2009 and stayed in the backyard of a friend's home, for fear of infesting his friend's home with bed bugs. This was to be a short-term plan as remaining in the rental unit had become too difficult due to the constant bites received while sleeping. The tenant wished to remain out of the rental unit until the infestation was eliminated. On July 13 the tenant had his truck fumigated and missed the day at work. A receipt for the fumigation was submitted as evidence.

In mid-July the tenant had contact with the landlord's agent, named R. At this time the tenant told R that he was not occupying his rental unit until the bed bug treatments were made. The agent told the tenant that the landlord would not be treating all of the units in the building.

On July 21, 2009 the tenant sent the landlord a letter, a copy of which was submitted as evidence. This letter outlined the bed bug problems in the tenant's unit and a neighbouring unit, the need to fumigate his truck, to purchase shampoo, that his leather furniture could not be sprayed for the presence of bugs and eggs, that only 4 units were being treated and that Rid All Pest Control, hired by the landlord, had recommended the whole building be fumigated and re-inspected. The tenant asked that the landlord deal with the issue by no later than July 31, 2009; expecting the landlord would take steps to rid the entire building of the problem. The tenant's letter indicated he would not return until the recommendation of the pest control company was implemented and that he was hopeful the bed bugs would be eliminated by July 31, 2009.

On July 28, 2009 the tenant went to the apartment to pick up his mail and met another occupant who told the tenant he had witnessed staff removing belongings from the tenant's rental unit. The tenant took his camera to the rental unit and found that all of his belongings he had left behind on July 13 had been removed. The tenant was shocked that the remainder of his belongings had been removed from his rental unit during a period of time when he had legal occupation of the unit. The tenant had paid rent for the month of July yet his mail box lock had been changed.

The landlord questioned the photographs taken by the tenant and insinuated that the claim for the loss of the furniture may have been premeditated. The landlord's agent was not present at the hearing, as he is no longer employed by the landlord.

During the hearing the landlord offered the tenant \$1,000.00 as a settled agreement; the tenant rejected this offer. The landlord questioned the amounts claimed and the absence of receipts for many of the items the tenant claims were removed by the landlord.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the

damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In making my decision I considered Residential Tenancy Branch Policy which suggests a dispute resolution officer may award damages when it is not possible to place an actual value on the loss. The tenant has provided photographs of the belongings taken by the landlord and has given an estimate of the value for each item. I have considered the estimated values and assigned what I find to be reasonable value for the items.

In relation to the loss of the personal property, which has been documented through photographs submitted as evidence, I find that the landlord's staff was responsible for removal of these items. I base this decision on the photographic evidence and the information provided to the tenant by another occupant on July 28, 2009, who informed the tenant that his belongings had been removed by the landlord. I also base this decision on the landlord's acknowledgment during the hearing of the tenant's loss and the offer to settle this claim; which the tenant rejected.

I find that the loss of furniture and belongings suffered by the tenant was due to a breach of the Act and Residential Tenancy Regulation by the landlord. The tenant had legal possession of his rental unit until July 31, 2009, yet the landlord entered the unit without providing any notice, as required by section 29 of the Act. Removal of a tenant's personal property while a tenant has legal possession of the unit is a breach of Residential Tenancy Regulation 24, which provides the steps that must be taken in order to determine if belongings have been abandoned.

I considered the testimony provided by the tenant, that he told the landlord's agent he was not going to occupy his unit until the bed bugs were eliminated and find that despite any understanding the agent might have had, that the tenant had legal possession of the rental unit at the time the landlord removed and disposed of the personal belongings.

There is no dispute that the rental unit had bed bugs and that the landlord did treat the unit on July 13, 2009. However, the landlord took 2 weeks to arrange treatment, during which time the tenant was expected to live in the unit. This resulted in the tenant suffering bed bug bites and caused him to vacate the unit, in the hope effective eradication would take place.

I find that the tenant is not entitled to registered mail costs, as I only have authority under the Act to accept fees as determined by section 72(1).

I have accepted the cost of shampoo, due to the delay in having the unit treated for pests, and find the tenant is entitled to this cost which is supported by a receipt.

As the landlord changed the lock to the tenant's mail box I find that the tenant was forced to rent a postal box, as he required immediate postal services to an alternate address. A receipt was submitted as evidence.

I have accepted storage costs for July and August 2009, only, as section 7 of the Act requires the person making a claim to mitigate their loss. I find that by September 2009, it is reasonable to have expected the tenant to have located another residence and no longer require storage. I dismiss the claim for the cost of boxes, as I find that boxes could be located without cost.

The tenant has claimed loss of income, but provided no verification supporting this claim; therefore, I dismiss the claim for loss of wages.

As the tenant had to remain in an infested rental unit for two weeks while awaiting treatment, during which time he was required to use his vehicle, I find he was justified in having his vehicle fumigated while he awaited further action by the landlord and that he is entitled to this cost which is supported by a receipt.

I find, based upon the receipt provided as evidence, that the tenant is entitled to reimbursement of his Telus cancellation fee, which would not have occurred had the landlord mitigated the loss by reacting more quickly and effectively to the report of bed bugs. I also base this decision on the actions of the landlord, who removed the tenant's belongings from the rental unit, in breach of the Act.

The tenant provided photographs which show that his entertainment centre had been disassembled and that some pieces were placed in the garbage. I find that the tenant is entitled to compensation for this loss.

I have considered the loss of the remaining items and assigned what I have determined to be reasonable compensation for each. I have adjusted the amount claimed for the Telus modem and receiver to reflect the amount charged for CPE rental non-return indicated on the Telus bill that was submitted as evidence. I have no evidence before me of the cost charged for the captive works satellite receiver and have dismissed that portion of the claim.

| | Claimed | Accepted |
|---|---------|----------|
| RC shampoo for bed bugs (receipt) | 22.04 | 22.04 |
| Extra storage boxes (receipt) | 22.08 | 0 |
| Post office box – mail redirect (receipt) | 102.59 | 102.59 |
| Maple Leaf storage receipts | 188.25 | 115.50 |
| Missed day of work due to fumigation of truck | 300.00 | 0 |
| Tri Cities Pest Detective – spray truck | 183.75 | 183.25 |

| | | |
|-------------------------------------|-----------------|-----------------|
| for bed bugs (*receipt) | | |
| Telus cancellation charge (receipt) | 130.00 | 130.00 |
| Entertainment centre | 350.00 | 200.00 |
| Sony stereo | 150.00 | 75.00 |
| Stereo speakers | 400.00 | 400.00 |
| Computer | 350.00 | 200.00 |
| Printer | 150.00 | 50.00 |
| Scanner | 150.00 | 50.00 |
| Computer desk | 100.00 | 100.00 |
| Mattress and box spring | 200.00 | 200.00 |
| Microwave | 70.00 | 70.00 |
| Leather couch and loveseat | 650.00 | 650.00 |
| Telus modem and TV receiver | 230.00 | 199.00 |
| 20 inch Sony TV | 300.00 | 200.00 |
| Captive works satellite receiver | 150.00 | 0 |
| Magnavox bedroom TV | 200.00 | 100.00 |
| Ski boots | 80.00 | 30.00 |
| Total | 4,487.15 | 3,077.38 |
| Filing fee cost | 50.00 | 50.00 |

Therefore, I find, as provided by section 67 of the Act, that the tenant is entitled to compensation for damages and loss in the sum of \$3,077.38.

I find that the tenant's Application has merit, and that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$3,127.38, which is comprised of \$3,077.38 in compensation for damages and loss and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of **\$3,127.38**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: March 2, 2010.

Dispute Resolution Officer