

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Two hearings were held: i) face-to-face on February 15, and ii) teleconference on May 10, 2010. Both parties participated and/or were represented in both hearings and gave affirmed testimony. While present for the first hearing, the tenant did not participate in the second hearing; rather, as she was described as “upset,” she relied on representation by counsel acting as agent on her behalf.

The landlords did not compile an inventory of possessions left behind in the unit by the tenant when she vacated the unit. The first hearing was adjourned after it was determined that the parties required the benefit of more particular evidence from the landlords in this regard. However, when the second hearing was convened, evidence provided by the landlords concerning these possessions remained general and non specific. In particular, the assistant manager of the property (now retired) did not participate in the hearing; it is understood that she was the last agent of the landlords who had contact with the tenant in regard to the final disposition of the tenant’s belongings around the time when tenancy ended. The landlords’ agent who appeared at the second hearing testified that the assistant manager informed her of the tenant’s instruction which is that items left behind in the unit could be disposed of.

During the second hearing the parties explored the possibility of resolving the dispute between them. The landlords’ agent undertook to consult with her superior in order to confirm the details of a settlement offer before then contacting the tenant’s counsel / agent. The parties agreed that following a settlement proposal by the landlords, the tenant’s counsel / agent would confer with the tenant. It was agreed that after the conclusion of the consultative process between the parties, the tenant’s counsel / agent

would inform the residential tenancy branch either that the dispute had been resolved, or in the alternative, that the dispute had not been resolved.

Thereafter, by way of letter to the residential tenancy branch dated May 20, 2010, the tenant's counsel / agent advised that a settlement had not been reached.

Issues to be decided

- Whether the tenant is entitled to a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement
- Whether the tenant is entitled to recovery of the filing fee

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on or about January 1, 2000. The tenant alleges that bedbugs in her unit, along with the negative impact on her health of pest control treatments, led to the end of her tenancy. An approximate chronology of the most relevant major events is set out below.

In April 2009 the tenant developed an itchy rash on her arms and legs. On May 29, 2009 her physician informed her she had been bitten by bed bugs and that her rash was an allergic reaction. Subsequently, as the situation impacted negatively on the tenant's physical and emotional health, she obtained assistance to relocate to alternative accommodation on a temporary basis.

In early June 2009 the tenant informed the landlord there were bed bugs in her unit. On or about June 10, 2010, an inspection of her unit was undertaken by a pest control company, and bed bugs were found in her couch. The tenant then requested that her couch be removed. The landlords claim that a time was scheduled to remove the couch from the tenant's unit on June 13, 2009, but as the tenant was not home, persons dispatched to remove the couch did not enter the unit. Accordingly, the couch remained in the unit until June 20, 2009, when the landlords again dispatched staff to remove it.

Thereafter, the tenant was informed that a pest control treatment would take place on June 24, 2009, and that in preparation of the treatment certain actions had to be undertaken by the tenant. These actions included cleaning the unit and moving furniture away from the walls. Despite the tenant's being unable to obtain assistance in completing this preparation, the pest control treatment took place as scheduled.

By way of letter dated June 25, 2009, the tenant gave notice of her intent to end the tenancy effective July 31, 2009.

Thereafter, a second pest control treatment took place on July 8, 2009, even while the tenant had still not undertaken to prepare the unit as instructed in advance.

By way of letter dated July 23, 2009, the tenant gave what appears to be a second notice of her intent to vacate the unit. In this letter the tenant states that the effective date of the end to tenancy is August 30, 2009. Following this, the tenant briefly entered her unit to collect some of her personal items which included clothing. The tenancy appears to have ended on or about July 31, 2009.

A third pest control treatment was scheduled to occur on July 29, 2009 but the tenant cancelled it. Subsequently, it was rescheduled to take place on July 31, 2009, but this too was cancelled by the tenant. The tenant proceeded to remove more of her possessions but others remained in the unit and included, but were not necessarily limited to, "clothing, pots, pans, glassware, a mattress, bedding, and her furniture."

The tenant provided a cost estimate of possessions left in her unit which she claims were disposed of by the landlords, without her authority, in the amount of \$9,623.00. The tenant's detailed inventory includes a monetary value assigned to each possession. The tenant testified that the possessions include items she inherited from her parents (which have sentimental as well as monetary value) and items she herself purchased. The tenant testified that the inventory was completed in October 2009, or more than two months after she had finally vacated her unit.

The landlords take the position that it is the tenant's responsibility to remove all of her possessions at the end of tenancy, and that in any event the tenant gave verbal authorization for the landlord to dispose of any possessions left behind after she vacated the unit.

Additional costs claimed by the tenant include \$150.00 for allergy medication, \$50.00 for removal and transfer of possessions to storage by truck, \$147.00 for storage fees, \$87.00 for three cans of spray for treating items in storage, and \$225.00 for laundering and dry-cleaning of clothes and bed linens.

In addition to all of the foregoing, the tenant seeks compensation of \$5,000.00 for the loss of quiet enjoyment. While the total amount of the tenant's claim is approximately \$15,282.00, the tenant has rounded her claim off to \$15,000.00.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlords took reasonable steps in a timely manner to address the bed bug infestation after it was brought to their attention. If eradication of bed bugs was impeded in any way, I find that it was a result of the tenant's unwillingness and / or inability to obtain assistance to prepare her unit as instructed before the pest control treatments. Accordingly, I dismiss the tenant's claim for compensation for breach of the right to quiet enjoyment.

Following from the above, as I am unable to conclude that the landlords were remiss in their response to the tenant's report of bed bugs, I dismiss the tenant's claim for compensation related to transfer of certain possessions to storage, actual storage of possessions, costs for spraying belongings in storage, as well as costs for medication and laundry.

As to the tenant's claim for compensation related to items she alleges were improperly disposed of by the landlords, the tenant's evidence does not include receipts showing the purchase value for any of these items; neither does the tenant's evidence include advertisements for similar items to support the claim for a specific retail or replacement value; further, the tenant's evidence does not include a description of the age or condition of the items at the time they were allegedly disposed of.

Evidence submitted by the tenant includes photographs taken within the unit. These photographs are not originals but, rather, are black and white fax reproductions. These photographs are of limited value in determining what specific personal possessions may have been left behind in the unit after the end of tenancy. Items able to be identified include, but are not necessarily limited to, several large pieces of furniture, two pictures hung on the wall, two lamps, a microwave oven, pots / pans, a vacuum cleaner and kitchen utensils. There is some question as to when these photographs were taken, and some question as to whether the tenant removed certain belongings from the unit after the photographs were taken.

It is understood that the tenant had no insurance covering the loss of any of her possessions, and there is no evidence that the tenant maintained a current inventory of possessions kept in the unit, the likes of which might be required by an insurance provider.

The tenant indicated that she paid for storage of some items, however, she has not provided an inventory of items stored. I find it conceivable that some of the items the tenant recalls as having been left behind in her unit, may have indeed been packed in boxes and taken with her to her alternate accommodation, or packed in boxes and put in storage.

The tenant's evidence does not include any witness testimony, letters or affidavits in support of her claim as to specific possessions left behind in the unit.

Part 5 of the regulation speaks broadly to **Abandonment of Personal Property**. Section 24 of the regulation specifically addresses **Abandonment of personal property**, and 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.

Evidence does not include testimony from the assistant manager who, as previously stated, had direct contact with the tenant in relation to the disposition of her possessions at the end of the tenancy. However, the landlords' evidence includes a letter written by the assistant manager; in it there is no reference to instructions or consent allegedly given by the tenant that her remaining possessions could be disposed of by the landlords.

Further, there is no evidence before me pertinent to the point in time when the landlords disposed of the tenant's possessions, described by the landlords' agent as "junk" and nothing with any significant value.

Based on the documentary evidence and testimony of the parties, I find that the tenant clearly established that her intention was not to return to the unit. On a balance of probabilities I further find that the tenant did not likely provide the landlord with verbal authorization to dispose of possessions left behind.

Section 25 of the regulation addresses the **Landlord's obligations** concerning possessions left behind by a tenant, and 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).

The landlords compiled no inventory of the tenant's possessions and did not undertake to store them. While the landlords may have concluded that that the cost of removing, storing and selling the property would be more than the proceeds of its sale, and that in light of the bed bug infestation, there was a risk that storage of the property would be unsanitary or unsafe, there is no evidence that the landlords turned their minds in

earnest to either of these possibilities. Neither did the landlords present any evidence to support the existence of a thought process they may have undertaken in that regard.

Pursuant to all of the above, I find that the tenant has failed to meet the burden of proving, on a balance of probabilities, that possessions left behind comprise all items listed on her retrospective inventory. Therefore, I find that the tenant has not established entitlement to compensation to the extent claimed.

However, on a balance of probabilities, I find the tenant has established entitlement to compensation for some large items which are discernible in the photographs and which I have concluded were left behind. While the tenant may have had misgivings about leaving certain things behind, and later suffered an experience of loss for certain possessions in particular, I find that she lacked the will and / or the means for removing particularly large items at the time of her final departure from the unit. These items and the tenant's respective assignment of values are as follows:

\$3,000.00: dining room suite and colonial hutch

\$350.00: microwave

\$40.00: two end tables

\$400.00: antique vanity desk with mirror

\$125.00: book case

\$100.00: storage wall unit with drawers

\$3,000.00: full queen size bedroom suite

\$400.00: queen mattress

Total: \$7,415.00

Residential Tenancy Policy Guideline # 16 speaks to **Claims in Damages**, and reads in part as follows:

Types of Damages

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered “pecuniary” losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered “non-pecuniary” losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering.

Criteria Considered When Awarding Damages

If a claim is made by a tenant for damages for breach of the abandonment regulations by the landlord the normal measure of damages is the market value of the lost articles, ie: the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant.

In the absence of detailed information about these furnishings, as addressed earlier in this decision, I find the tenant is entitled to compensation in the limited amount of \$1,853.75, which is 25% of the total value of these furnishings as assessed by the tenant (\$7,415.00 x 25%). This finding represents affirmation of a breach of the abandonment regulations by the landlords, in addition to a reflection of the monetary and sentimental value to the tenant of these particular possessions.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$1,853.75. This order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

As the tenant's filing fee was waived, her application to recover the filing fee is hereby dismissed.

DATE: June 8, 2010

Dispute Resolution Officer