



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation or loss, return of the tenant's personal property and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started April 1, 2006 with monthly rent of \$625.00 and the tenant paid a security deposit of \$315.00.

The tenant testified that irreplaceable/invaluable possessions: suitcase, wool rug, hand-hooked rug, handmade quilt, 4 English prints, 3 boxes of legal documents etc were in locker 45-3D and thrown out by the landlord. The tenant stated that she was never advised by the landlord that she had to come and remove this property from her locker or risk it being disposed of. The tenant stated that 31-3D, the original locker assigned to her was too small and that in 2007 the maintenance man A.D. had advised her to use locker 45-3D. With A.D. acting as an agent/representative for the landlord the tenant took possession of locker 45-3D and continued to use 45-3D for the past 4 years.

The landlord's witness testified that she had been to the tenant's locker on numerous occasions over the past 4 years helping take items in and out of the locker. The witness was very clear that locker 45-3D was in fact the locker being used by the tenant during this 4 year time period.

The landlord testified that according to their records, the locker in question, 45-3D, has never been assigned to the tenant. This locker on paper was assigned to the tenant in unit 313 who has since vacated.

Testimony from the landlord was imprecise when verifying if the tenant from unit 313 had left items in locker 45-3D and if the landlord removed these items when the tenant

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vacated. If in fact the landlord emptied locker 45-3D with the perception that this was abandoned property from the tenant in 313, the landlord would have been acting in good faith however the landlord may have inadvertently removed items belonging to the applicant.

The landlord stated that in early October 2010 after being contacted by the applicant about this issue, all site staff were asked if they had emptied locker 45-3D and none had. And while the landlord stated all site staff had been contacted, A.D. who is currently out on leave was not contacted. The landlord's evidence shows that in September site staff put an orange lock on locker 45-3D as it was empty and this is normal procedure.

The landlord stated that when the observe property in unassigned lockers the landlord sends a minimum of 3 notices out to all tenants in the complex over a period of 90 days to ascertain ownership of any belongings and allow time for the tenants to remove their items. However the tenant testified that September 22, 2010 was the first time that the landlord had ever sent notices to tenants about items being left in lockers and this notice was sent the day after the tenant reported her loss to the landlord.

The landlord's records show that the tenant was assigned locker 31-3D in 2006 and it is not reasonable to believe that the applicant used an alternate locker after surrendering 31-3D in April 2007. Locker 31-3D was assigned to the tenant in unit 319 who is still in possession of the locker and according to the landlord's records, in April 2006 locker 45-3D was assigned to the tenant in unit 313 who on paper, retained possession of the locker until July 2010.

In October 2010 the tenant moved from unit 308 to 408 and was assigned locker 68-4D.

The landlord stated she has no knowledge of the tenant's belongings ever being in the locker in 45-3D and has no knowledge of what happened to the personal items the tenant now claims as being lost or destroyed by the landlord. While it is recognized that the landlord cannot know what specific items may belong to a particular tenant in a particular locker, it behoves the landlord to ensure that their records are accurate and up to date with periodic reviews done to prevent any confusion or removal of personal property.

The tenant stated that when landlord A.B. called her about the issue that A.B. commented 'this has happened before'; landlord I.B. responded that this comment was untrue as she was in the office and had overheard the conversation. The tenant also stated that when A.B. called her the possibility of a settlement for the lost items was

brought up leaving one to surmise that the landlord may be taking some responsibility for the matter.

Due to the loss the tenant has suffered, the tenant now feels un-safe in her apartment and is considering moving. The tenant has requested that the landlord remove the '\$500.00 liquidated damages' clause from her fixed term tenancy and allow the tenant to break her fixed term tenancy without penalty and the landlord has agreed to do this. The tenant will be required to give the landlord a clear months notice as required under the Act should she decide to move. It would be beneficial to both parties to have this agreement in writing and signed by both parties.

Analysis

The tenant has not submitted any paper evidence showing that locker 45-3D was ever assigned to her for use by the landlord however testimony from the tenant and tenant's witness strongly affirm that the tenant had her belongings stored in locker 45-3D for the past 4 years. It is not reasonable to believe that the applicant used an alternate locker after surrendering 31-3D in April 2007 as she actually required a large locker for storage. Evidence submitted by the landlord shows that locker 45-3D had not, at any time, been assigned to the tenant during her tenancy.

And while the tenant has listed items which she claims were stored in locker 45-3D and disposed of by the landlord, and has assigned a monetary value to each, the tenant has not submitted evidence of receipts proving purchase(s), evidence of the price for similar items available for sale, evidence related to the age or condition of the items, and no photographs of any of these items. To that end I find the tenant is entitled to a nominal award.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Having considered the documentary evidence submitted by all the parties, their respective testimony, and the relevant statutory and common law provisions, I find that the tenant has established entitlement to a monetary claim against the landlord for the loss of personal property in the amount of \$1500.00. The tenant is also entitled to recovery of the \$50.00 filing fee.



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Conclusion

I find that the tenant has established a monetary claim for \$1500.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 in the amount of \$1550.00.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$1550.00**. If the amount is not paid by the landlord, the order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 17, 2010

Dispute Resolution Officer