



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with an application by the tenant for money owed or compensation for damage or loss and return of the tenant's personal property.

Issue(s) to be Decided

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

Background and Evidence

Matters related to this tenancy were heard September 11, 2009 under files 741205 (landlord) and 739436 (tenant), the landlord attended the hearing but the tenant did not. In this hearing the landlord was successful in obtaining an order of possession for the rental unit and a monetary order for unpaid rent.

At the start of the hearing the landlord's witness stated that he could speak as a witness only to the circumstances related to the tenancy in September 2009 but that he had no knowledge of what transpired between the tenant and landlord after that time and that he had no knowledge of the landlord's actions regarding the tenants personal belongings.

The tenant testified that the landlord had agreed to allow the tenant until September 23, 2009 which was 'welfare day' to remove her belongings from the rental unit as the tenant would not have funds to rent a truck prior to this date. This move out date was mutually agreed to so that the tenant had time to peaceably vacate and the Writ of Possession would not have to be enforced by the landlord's agent. It was also agreed that if the tenant could not vacate by this date she would contact the landlord or landlord's agent and arrange a date to remove her belongings.

The landlord's witness testified that he remembered going to the rental unit September 22, 2009 at which time the landlord changed the locks to the rental unit. The landlord's witness does remember all of the rooms with the exception of one room being empty

and this one room was full of packed boxes and being used as a staging area. The landlord's witness recalled seeing a note and keys that were believed to have been left by the tenant for the landlord on this date and this was taken as an indication of the tenant complying with the agreement to vacate.

The landlord's witness (landlord's agent at the time of the September 2009 hearing), sent the landlord a follow-up letter outlining the agreement for the tenant to vacate, possible arrangement of a future move date if required and information that the landlord would potentially be required to store the tenant's personal belongings for 60 days per the Residential Tenancy Act and Regulations.

The tenant stated that the note and keys had been left by her boyfriend for her and not by her for the landlord. The tenant stated that she was surprised and upset to find the locks changed on September 23, 2009 as she understood that she had until that date to vacate.

The tenant testified that she contacted the landlord and made arrangements to return on November 15, 2009 to remove her personal belongings but that when she got there the landlord told her she could not remove anything from the rental until she had cleaned up any trash or discarded items in the yard. The tenant complied with the landlord's demand to clean up the yard however due to time constraints could not remove her belongings that same day. The tenant stated that before she left she advised the landlord that she would call him as soon as she had arranged for another truck and the landlord said this would be okay.

On December 9, 2009 when the tenant had the ability to get another moving truck she contacted the landlord to make arrangements to remove her personal belongings and was told by the landlord that everything had been taken to the dump.

The tenant stated that with the exception of some family heirlooms all of the items in the rental unit were approximately 1 year old as she had borrowed money to purchase all new items when she took possession of the rental unit. The tenant was unable to submit any original receipts as all of her personal papers were disposed of by the landlord.

The tenant in this application is seeking \$15,000.00 compensation for loss of her personal belongings.

Bathroom: towels, toiletries etc.	\$747.17
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Kitchen: utensils, dishwasher, microwave etc.	\$3425.79
Vintage dressers (3)	\$5198.00
3000 Antique Ashley Drake & Brander dolls	\$3000.00
Living room furniture	\$1791.04
Son's room: electronics, bed, rug dressers	\$10838.00
Tenant's room	\$0.00

Analysis

Based on the documentary evidence and testimony I find that the tenant has met the burden of proving that they are entitled to compensation for loss. The landlord's witness confirmed the tenant's testimony that the tenant's personal belongings were still in the rental unit on February 22, 2009 when the landlord changed the locks.

Part 5 of the Residential Tenancy Regulation (sections 24 – 30) speaks broadly to **Abandonment of Personal Property**: in detail, section 24 addresses **Abandonment of personal property** and section 25 sets out **Landlord's obligations**.

While the landlord may have determined that the items were stored for 60 days per the Regulations, I find there is no evidence to justify the landlord disposing of the tenant's personal property and that the tenant *"could not reasonably be expected to return to the residential property"*. The tenant, as agreed by the parties, remained in contact with the landlord, made a number of attempts to set a date to remove her belongings but had some of these attempts thwarted by the landlord's availability.

While the tenant has listed items which were allegedly left behind in the unit and disposed of by the landlord, and has assigned a monetary value to each, they have submitted no evidence of receipts proving purchase(s), no evidence of the price for similar items available for sale and no evidence related to the age or condition of the many of the items. Photographic evidence of the tenants' living room and bathroom are however included in the tenant's evidence and these photographs do establish a portion of the tenant's claim.

Therefore in the absence of receipts, replacement estimates etc., I find that the tenant has established entitlement to compensation in the limited amount of \$7000.00,

Bathroom: towels, toiletries etc.	\$350.00
Kitchen: utensils, dishwasher, microwave etc.	\$750.00
Vintage dressers (3)	\$900.00
3000 Antique Ashley Drake dolls	\$1500.00
Living room furniture	\$1000.00

Son's room: electronics, bed, rug dressers	\$2500.00
Tenant's room	\$0.00
Total Compensation	\$7000.00

Conclusion

I find that the tenant has established a monetary claim for **\$7000.00** and I grant the tenant a monetary order under section 67 of the *Act* for **\$7000.00**.

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: August 2, 2011.

Residential Tenancy Branch