



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and other issues.

The tenants, the landlords and a witness for the landlord attended the conference call hearing. All persons present gave sworn testimony and were given the opportunity to cross exam each other and the witness on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on September 01, 1998, Rent for this unit has increased to \$1,095.00 per month and is due on the first day of each month in advance.

The tenant's testify that they had the use of two storage lockers within the building provided by the landlords' agent. The tenants state it was always the policy that no lockers were

assigned but tenants were able to just take over a vacant locker and put their own lock on it. The tenants state that on June 27, 2011 they went to get something from one of their lockers and found both lockers empty, the locks had been removed. They state that other lockers were also empty. The tenants' state they thought at first that they had been broken into and their possessions along with those of other tenants had been stolen.

The tenants testify that they contacted the landlords' agent to inform them of this theft and state the landlords' agent told them that they had authorised the removal of the tenant's belongings. The tenants state the landlords' agent asked them if they had not seen the Notice posted by the mailboxes concerning the lockers. The tenants' state this Notice was only up for three weeks, it was posted during the mail strike when the tenants would have no reason to go to their mailbox.

The tenants testify that they contacted their insurance company and they classified this as a theft and required a letter from the landlord concerning their authorisation for the removal of their belongings and an itemised list of their belongings from either the landlord or removal company in order for the tenants to make a claim. The tenants' state they contacted the landlord who told them they did not want to write a letter as it would be an admission of guilt. The tenants' state they contacted the removal company to obtain an itemized list of their belongings which were removed and the removal man told them that no list was made and all their belongings were taken to the waste station. The tenants' state at this point they contacted their lawyer who advised them to file a claim with the Residential Tenancy Board.

The tenants testify that when they saw the landlords' Notice there was a list requesting all tenants to put a locker number against their unit number. They state someone had put locker number eight by their unit number. They state this was never their locker as they used locker numbers 32 and 47. Locker number eight has someone else's belongings stored in it.

The tenants' testify the items that they can recall that were stored in their lockers were:
95 jeep YT super soft top/hardware and three soft windows valued at \$1,000.00
Folding chair and cushion valued at \$100.00

Two folding canvass chairs and bags valued at \$80.00
Wood end table with glass top valued at \$250.00
Large suitcase valued at \$60.00
Eight boxes of wine bottle valued at \$96.00
Seven foot Christmas tree with 300 lights valued at \$250.00
5000 BTV window air conditioner valued at \$239.99
Small playmate cooler valued at \$16.99
Large cooler on wheels valued at \$49.99
One standard metric socket set valued at \$179.99
Two Sanyo speakers valued at \$40.00
Counter top wine cooler valued at \$30.00
Eight to ten picture frames valued at \$200.00
Handmade hammock from Guatemala valued at \$50.00
Five paper-mache Santa's valued at \$120.00
Two glass snowmen with lights valued at \$40.00
Door wreath valued at \$30.00
Two outdoor reindeer with lights valued at \$158.00
Four piece wooden snowman set valued at \$40.00
Miniature fibre-optic tree valued at \$20.00
Six inch angel valued at \$10.00
Musical reindeer valued at \$20.00
Musical penguins valued at \$20.00
Three village houses with lights valued at \$75.00
Stuffed 12 inch Santa's valued at \$20.00
Set of outdoor Christmas lights valued at \$20.00
Two extension cords valued at \$20.00
Tree skirt valued at \$40.00
100 foot white garland valued at \$25.00
Two dozen wooden ornaments valued at \$25.00
One hundred coloured Christmas decoration balls valued at \$200.00
Eight Bare-Foot bears collectable ornaments valued at \$80.00
Five Sno- Baby collectable ornaments valued at \$100.00

Twenty specialty collectable ointments – daughter, grandma and sister valued at \$400.00

Boxed heirloom Designer wedding dress valued at \$4,000.00

Long wedding veil valued at \$500.00

Head dress with pearls valued at \$150.00.

The tenants testify that there could also be other items which were in the storage lockers which they cannot recall at this time. Many of the items missing are of sentimental value of which no true price can be awarded as they are irreplaceable. The tenants state they went to great lengths to obtain estimates for their belongings and these have been provided on their monetary order work sheet. The tenants state if the landlord had acted in the proper manner and issued a notice to each of the tenants about the lockers they could have avoided this situation.

The landlords' agent testifies that the tenants do not have locker number 47 as this belongs to another unit. But states they could have had locker number 48.

The tenants agree this is the case and locker number 48 was their locker.

The landlords' agent testifies that she posted this notice above the mailboxes on May 27, June 06 and June 10, 2011. She states it was a two week notice but remained in place until all the unclaimed lockers were emptied. The June 06 notice informed the tenants that there were five lockers unclaimed and it was deemed that they were abandoned and the contents would be removed. The landlords' agent states she wrote locker number eight by these tenants room number as she thought this was their locker.

The landlord testifies that she called the removal company and they attended on June 27, 2011 to remove the contents of these abandoned lockers. The landlords' agent states she did not stay while the lockers were emptied but states she later spoke to the removal man who told her it was mostly junk.

The landlord testifies that there was no intent on their part and they used a reputable removal company. The landlord states they had the intent to resolve this with the tenants until they saw their list of items claimed.

The landlord calls their witness who was the removal man who emptied the lockers. The witness testifies that the landlords' agent contacted his company to clear out a bunch of abandoned lockers. The witness states they went to the building and removed the locks and loaded the contents of these lockers into the truck and took it all to the dump. The witness states he does not recall what items he removed with the exception of some wine bottles and boxes of Christmas decorations. The witness states he does not look in the boxes that he removes but just throws them in his truck.

The landlord asks the witness if he recalls seeing a jeep hood or wedding dress. The witness replies he does not pay attention to what he removes as he does this on a daily basis.

The tenants decline to cross examine this witness.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. S. 27 of the *Act* states a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the living accommodation or is a material term of the tenancy agreement. It also states if it is not essential to the tenants use of the rental unit or is not a material term of a tenancy agreement the landlord must give thirty days written notice of the termination or restriction of the service or facility and reduce the tenants rent to an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The landlord argues that a notice was posted by the mail boxes concerning the storage lockers and informing the tenants that unless they notify the landlord of which lockers they are using the contents will be removed and the lockers will be considered abandoned. The tenant's argue that this notice was posted during a mail strike when they would have no reason to go to the mail boxes and the landlord should have posted this notice on all the tenants' doors to inform them.

I have considered both arguments in this matter and find the landlord did not comply with s. 27 of the *Act* to inform the tenants that the use of their lockers was withdrawn and the contents of their lockers would be removed.

I further find s. 24 of the Residential Tenancy Regulations informs a landlord what procedures they need to carry out if they deem a rental unit to be abandoned. In this case the landlord deems the storage lockers to have been abandoned and I would apply the same criteria in this case. S. 24 states a landlord must keep a written inventory of any belongings removed and store those belongings in a safe manner for a period of not less than 60 days following the date of removal.

The landlord failed to keep a written inventory of the belongings and refused to provide a letter stating they authorized the removal of the tenant's belongings. Due to this the tenants have been unable to file a claim under their own contents insurance.

I have considered the tenants monetary claim for their missing belongings. In a matter such as this a test is normally applied for a claim for damage or loss as follows

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

However, I accept in this matter that the tenants would be unable to provide sufficient evidence to determine exactly what belongings they had in their storage lockers or the actual amount for these items replacement costs as many of them were gifts or heirloom items. I also find it would be unlikely that the tenants would have receipts for many of these items. I further find the tenants could not do anything to mitigate their loss as the landlords did not comply with the *Act* when they removed their belongings.

The Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*. In this matter I find the landlord has breached s. 27 of the *Act* and s. 24 of the Regulations. I further find the landlord has breached their statutory duty to the tenants by not informing the tenants that their belongings were to be removed from the storage lockers or to store the belongings in a safe manner had they really believed the storage lockers had been abandoned. Had the landlord posted a notice to each tenant instead of one notice by the mailboxes this matter could have been avoided. Consequently, I find the loss claimed was a foreseeable result of the landlords' actions and it is my decision that the tenants claim is not unreasonable for the items claimed. The tenants are therefore entitled to a Monetary Order in compensation for their loss to the sum of **\$8,755.96** pursuant to s. 67 of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$8,755.96**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 24, 2011.

Residential Tenancy Branch