

DECISION

Dispute Codes:

MNDS

Introduction

This is the Tenants' application for compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants served the Landlord's agent with the Notice of Hearing documents by handing the documents to the Landlord's agent at the rental property on June 30, 2011. It was also determined that each party served the other with their documentary evidence in accordance with the service requirements set out in the Act and the Rules of Procedure.

Issues to be Decided

- Are the Tenants entitled to compensation for loss of their personal property pursuant to the provisions of Section 67 of the Act?

Background and Evidence

This tenancy began on November 4, 2009. The Tenants and their two children lived in the rental unit. In February 2010, the female Tenant was incarcerated. The male Tenant testified that at the end of March, 2010, he was evicted illegally. He stated that the Landlord and his agent let themselves into the rental unit with their own key and told him he had to leave, so he did. He testified that he never returned to the rental unit and left his key with the manager and the Landlord. The male Tenant testified that he lived on the streets and in temporary accommodation with friends and in homeless shelters and therefore had no forwarding address to provide to the Landlord. The female Tenant testified that her children were taken care of by relatives.

The female Tenant testified that all of their possessions were left in the rental unit. She stated that over the course of her incarceration, she communicated with the Landlord's agents about her possessions and indicated that she would pick them up and arrange to pay any outstanding indebtedness to the Landlord. The female Tenant testified that her parents went to the rental unit twice to speak with the Landlord's agents and were

advised that the Tenants' belongings were still at the rental property for her to collect when she was released from prison. The Tenants provided copies of her parents' letters to the female Tenant wherein they wrote about the visits.

The female Tenant testified that she went to the rental property upon her release from jail and discovered that all of her possessions (with the exception of her car and four garbage bags full of some clothing and family pictures) had been disposed of. She testified that the four garbage bags were stored in a storage locker at the rental property and her car was parked on the rental property. The female Tenant testified that the rest of her belongings were taken to the dump 9 days before she was released and that the Landlord's agent knew when she would be released. The Tenant stated that she believes the items were thrown away so she would not have an opportunity to see how many of her possessions were taken by strangers. The female Tenant stated that among her possessions were items of sentimental value that could never be replaced, including some of her son's Scout awards. The female Tenant testified that the Tenants had lost their home just before downsizing into the rental unit and that they had brought all of their furniture, and household items with them to the rental unit. The female Tenant stated that a lot of their possessions were still in boxes waiting to be unpacked when they could find space to put them.

The Landlord testified that he could not answer all of the Tenants' allegations because his previous manager dealt with the Tenants and he was not present. He stated that his previous manager had handled the Tenants' possessions and that he had not heard anything about his previous manager since the RCMP contacted him about 6 months ago asking if he knew his previous manager's whereabouts.

The Landlord testified that he considered the Tenants to have abandoned their possessions. He stated that some of the Tenants' friends, including the female Tenants' ex-husband, removed some of the Tenants' possessions. The Landlord testified that the Tenants' friends had keys to the rental unit, but he did not. The Landlord stated that he did not ask the female Tenant's permission to allow her friends to remove her belongings.

The Landlord testified that after 90 days, he had the remainder of the Tenants' possessions taken to the dump. He stated that he did not advise the Tenant that he would be doing so because the remaining items were worth less than \$500.00. He stated that he did not post an ad in the paper indicating that the items would be thrown away. No inventory was kept of the items he considered abandoned by the Tenants.

The female Tenant testified that she did not know the man who the Landlord identified as her ex-husband. She stated that she did not give anyone permission to remove any

of her possessions from the rental unit. The female Tenant stated that she was devastated when she found out her “whole life” had been looted by strangers or thrown away like garbage. The female Tenant stated that she even had to replace her ID because everything she owned was in the rental unit.

The Landlord’s witness testified that he was looking after the Landlord’s house on August 27, 2010, when the Landlord asked him to go to the rental property and take the Tenants’ possessions to the dump. He testified that the resident manager had a crew who loaded the Tenants’ belongings into his truck. He stated that it took 3 loads to dispose of all the belongings, approximately 4 tons. The witness testified that he did not take note of what was in the belongings, but it appeared to be broken furniture, bags, boxes, clothing, mattresses, etc. He said it looked like a hoarder situation and he believed the stuff was truly trash. When asked by the Landlord if it was possible that some of the stuff was from other rental units, he replied “no”, that the manager was “pretty specific that it came from the Tenants’ suite”.

The Landlord submitted that the Tenants had not proven that the female Tenant and her parents had communicated with the Landlord’s agent. He submitted that he could not be held responsible for the Tenants’ belongings after the 90 day period of abandonment without payment, notice, or return of the keys to the rental unit. He submitted that he had no access to the suite until August, 2010, and that only the Tenants did. The Landlord did not explain how he gained access to the suite in August, 2010.

The female Tenant provided a long list of her belongings, which she stated was compiled from memory. She also provided photocopies of photographs of some of her furniture that she had located in e-mails. The Tenant provided a list of used items listed for sale in a popular web-site, which she submits were similar to the items that were thrown away. The value of these items totals \$51,009.96, but the Tenants are abandoning any claims over \$25,000.00.

Analysis

Part 5 of the Residential Tenancy Regulations, a copy of which is attached to this Decision, provides for how a landlord determines abandonment of personal property; the landlord’s obligations with respect to storage of abandoned property; disposal of personal property and the landlord’s duty of care with respect to the property.

In this case, the Landlord considered the Tenants to have abandoned their property because they left their personal property at the rental unit after the tenancy agreement ended in March, 2010.

It is important to note that the Landlord did not dispute that the male Tenant was evicted illegally in March, 2010. I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed facts. The test of the truth of the story must align with the balance of probabilities and, in the circumstances before me, I find the version of events provided by the Tenants to be more probable than that of the Landlord for the following reasons:

1. The Landlord stated that he could not provide testimony with respect to some of the issues because he was not there.
2. The Landlord stated that neither he nor his agent had a key to the rental property. A landlord is entitled to possess a key to a rental unit and if a tenant has abandoned the unit, or if a tenant leaves without returning the key, the landlord may change the lock or otherwise gain access to the rental unit.
3. The Landlord testified that he considered that the Tenants had abandoned their property and therefore he disposed of it, but he did not dispute that the Tenants' car and 4 garbage bags full of their belongings were stored at the rental property until the female Tenant was released from prison.
4. The Landlord testified that the Tenants' property was worth less than \$500.00. The Landlord's witness testified that he removed 3 truck loads (4 tons) of property from the rental unit. I find it probable that the Tenants' possessions were worth more than \$500.00.

If a landlord believes a tenant has abandoned personal property, the landlord may remove the tenants' personal property from a rental unit, but he **must** deal with it in accordance with the provisions of Part 5 of the Regulation.

The Landlord knew that the female Tenant was incarcerated. As noted above, I favour the evidence of the Tenants with respect to the disputed testimony and I find it most probable that the female Tenant and her parents did communicate with the Landlord's agents regarding the Tenants' belongings. I find that the Landlord did not comply with the provisions of Part 5 of the Regulations, and in particular:

1. The Landlord did not keep a written inventory of the Tenants' property, contrary to the provisions of Section 25(1)(b) of the Regulation;
2. The Landlord did not give due notice to the Tenant, or publish a notice in a local newspaper, that he was disposing of the Tenants' property, contrary to the provisions of Section 27(2) of the Regulation; and
3. I find that the Landlord did not ask for or receive the Tenants' permission to allow others to remove any of their personal belongings from the rental unit. The Landlord did not exercise reasonable care and caution when dealing with the Tenants' personal property to ensure that it was not damaged, lost or stolen as a

result of an inappropriate method of removal, contrary to the provisions of Section 30 of the Regulation.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord did not comply with Part 5 of the Residential Tenancy Regulation and that the Tenants suffered a loss as a result of the Landlord's failure to comply with the Regulation.

This is the Tenants' claim for damage or loss under the Regulation and therefore the Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenants to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Regulation,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

With respect to the third element of the test, in a Supreme Court decision, *Bello v. Ren*, 183 A.C.W.S. (3d) 236, 2009 BCSC 1598, the Court noted that while the nature of the missing property and the value of the items must be proved by the tenants, the evidence must be weighed taking into account the difficulty a tenant faces in proving what is missing and what it is worth. The Court further noted that this task was made all the more difficult because the tenant's property was unlawfully seized and disposed of by the landlord.

I have carefully considered the detailed inventory list provided by the Tenants and the estimated cost to replace those items. Some of the items listed (for example a

collector's Canadian coin set, souvenir coin collection and 20 binders of complete Pokemon card sets) are difficult to quantify. These items are worth what a collector is willing to pay for them, and the Tenants were only able to provide evidence of what the asking price is. However, the final total for all items is \$51,009.96 and the Tenants have abandoned any amount over \$25,000.00 to remain within the monetary jurisdiction of the Act. The total list is more exhaustive, however **I find that the Tenants are entitled to compensation in the amount of \$25,000.00 based on only a portion of the items lost**, as follows:

Description of item	Advertised price (used, where appropriate)
King sized bed, 8 drawer dresser, 2 end table and mirror	\$2,000.00
8 pillows	\$50.00
Corner shelf unit	\$25.00
Guitar and stand	\$75.00
2 bedside lamps	\$20.00
13' colour t.v.	\$10.00
Upright vacuum	\$35.00
Men's clothing	\$200.00
Women's clothing	\$200.00
Sewing machine	\$68.00
Small grandfather clock	\$50.00
Electric fireplace	\$125.00
Encyclopedia set and stand	\$120.00
Bath towels, hand towels, tea towels, face cloths, dish towels	\$200.00
Blankets, quilts and duvets	\$500.00
Sheets and pillow cases	\$200.00
Table cloths (lace and linen)	\$100.00
Travel iron	\$15.00
Man's razor set	\$60.00
Blow dryer	\$15.00
Curling iron	\$10.00
Hair straightening flat iron	\$20.00
Bathroom scale	\$15.00
Makeup	\$50.00
Perfumes	\$100.00
Medicine	\$50.00
Prescription contact lenses (2 sets)	\$100.00
Indoor grill	\$35.00
Cooking dishes, plates, mugs, cutlery, tea pot, etc.	\$352.00

Recipe books	\$51.00
Small kitchen appliances (blender, toaster, coffee maker, microwave, toaster oven, mixmaster, electric kettle, etc)	\$285.00
Ironing board and iron	\$10.00
Scooba floor washer	\$130.00
Kitchen table with 4 chairs	\$60.00
China cabinet and curio hutch	\$125.00
Pinwheel crystal glasses	\$400.00
Mikasa "Ebony Meadow" china set for 8	\$1,769.21
Computer, screen, keyboard and computer desk	\$260.00
Sectional couch and matching chair	\$435.00
Entertainment centre	\$80.00
42" colour tv	\$300.00
80+ DVDs	\$400.00
200+ CDs	\$1,000.00
Stereo/speakers/CD & DVD players/3 section wall unit/VCR	\$1,190.00
Coffee table and two end tables	\$200.00
Candles and books	\$70.00
Roomba vacuum	\$150.00
2 kids' bikes	\$160.00
1 adult chopper bike	\$125.00
Family camping equipment	\$300.00
2 large tool chests/tool boxes/tools	\$5,000.00
Aluminum ladder and shop vac	\$245.00
3 black leather jackets	\$600.00
2 suede jackets	\$200.00
Family shoes/boots/seasonal coats/umbrellas	\$810.00
Bunk beds with mattresses	\$350.00
2 6-drawer dressers	\$90.00
Hanging chair/bedside table/electronic keyboard	\$139.00
32" colour tv/Nintendos/playstation/playstation2/Xbox/games	\$1,055.00
2 bedside lamps	\$20.00
Children's toys/stuffed animals/40+ board games	\$420.00
Cub scout camping equipment	\$500.00
6 pillows	\$50.00
Children's clothing	\$500.00
Brand new luggage sets (adults and children's)	\$230.00
Garburator (in box)	\$100.00
Imitation plants and trees	\$345.00
TOTAL	\$25,692.91

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$25,000.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 18, 2011.

Residential Tenancy Branch