Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages relating to the tenant removing the landlord's property from the rental unit.

Both parties appeared and gave testimony.

Issue(s) to be Decided

Is the landlord is entitled to monetary compensation for damages?

Background and Evidence

The tenancy began on December 1, 2011 and the rent was $400.00 per month. A $200.00 security deposit was paid. The tenancy ended on March 31, 2012.

Submitted into evidence was a copy of the tenancy agreement, written testimony, AND copies of communications.

The landlord testified that when the tenant moved in, furniture items from the previous tenant and some belonging to the landlord, were still remaining in the rental unit. Both parties also acknowledged that the tenant was expected, by the landlord, to assist in the removal of the unwanted items and that the tenant was told that he could place the landlord's two armoires and desk for sale on the internet on the landlord's behalf.

According to the tenant, he had no interest in the use of the furnishings, nor did he attempt to list the items for sale. The tenant testified that he did not want any items to remain, or to be stored in the unit, as it was being rented to him as an unfurnished residence. The tenant's written statement, in evidence, indicates that he repeatedly requested that the items be removed to no avail. The tenant testified that the items were merely left by the landlord to take up room in the tenant's rental unit.

According to the landlord, because the tenant was required to assist with removal of the unwanted items left in the suite by the previous occupant and also to deal with the two armoires and desk of the landlord, the tenant was given a reduced rent of only $400.00 per month. The landlord testified that, in addition, the landlord had also offered to

compensate the tenant a portion of the proceeds when the armoires and desk were sold.

The landlord testified that there were also two portable air conditioners in the unit for summer use, being that air conditioning was critical during hot weather. The landlord testified that these appliances could not be permanently affixed because only portable units were permitted by the strata corporation. The landlord stated that the units were approximately 2 years old. The landlord testified that storing these appliances in the unit during the off season was the only option. The landlord testified that the tenant was specifically told not to remove these two air conditioners.

Both parties testified that the air conditioners were removed by the tenant. The tenant testified that he gave the air conditioners away as he was given reason to believe that they were not wanted by the landlord. Written testimony placed in evidence by the tenant stated that:

> "*6. (The Landlord) did not discuss the air conditioners with (The Tenant) at any time whatsoever."*
>
> *"7.....he gave the air conditioners to someone else but it was because he believed that they were not wanted by (The Landlord) and formed part of the items she wanted put up on Craig's list"*

The tenant acknowledged that no written notification was given to the landlord demanding that the landlord remove furnishings or the air conditioners. However, according to the tenant, the landlord was well aware that the tenant wanted all of the items in the unit, including the air conditioners, removed. The tenant pointed out that there was no mention of any air conditioners being part of the rental unit in the tenancy agreement. The tenant's position is that these items were not wanted by the landlord and he was within his right to dispose of them, since he felt that he was under no obligation to store the landlord's property within his rental space.

The landlord's position is that the air conditioning units were part of the rental premises. The landlord testified that the tenant was not given permission to dispose of them, and in fact was told *not* to remove them. The landlord is asking for the compensation of $900.00 for the two air conditioners and $24.99 for the storage bin. The landlord is also requesting $17.99 reimbursement for a stove-top cleaner kit that is missing the sponge.

Analysis

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is

important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In regard to the tenant's disposal of the air conditioners, purported to be equipment that constituted part of the rental premises, I find that the question to be answered is whether or not the tenant should have reasonably known that these items were appliances or equipment that validly constituted part of the rental unit.

I find that air conditioners are normally affixed to the premises and as such would be considered as fixtures. In this regard these types of air conditioning units would not be separately listed on the tenancy agreement. However, in this case, only portable air conditioning units were permitted by the strata council to be used in the units and therefore it would be expected that they are stored on site, being that they could not be affixed year-round. I find that, like any amenity considered to be an appliance, if the appliance is present at the time of possession, it is normally presumed to be a part of the facilities for the tenant's use in the unit.

I find that, the only time that this presumption would not apply is if the landlord had specifically agreed that the appliance did not need to be used in the unit nor stored on the premises . In such a case, I would expect to see a written communication from the tenant stating that the air conditioners are not desired by the tenant and requesting the removal of these unwanted appliances. I find it follows that the unwanted appliances would then be returned to the landlord, not merely disposed of by the tenant.

I accept the tenant's testimony that he did not want the landlord's property imposing on his space and I find that this is a reasonable expectation, particularly with respect to the armoires, desk or household furnishings.

However, even if I accept the tenant's position that he genuinely believed that the air conditioners were included as part of the group of items that the landlord authorized for

sale on the internet site, I find that the tenant did not sell the items and evidently had no intention of compensating the landlord for their disposal. Instead the tenant evidently decided of his own volition to rid the suite of these items by giving them to a third party. I find that the tenant took this action without first asking the landlord for approval or even notifying the landlord of his decision to do this.

I do not accept the tenant's position that the fact the landlord never told him *not* to discard or give away the air conditioners would function to automatically grant him the right to do so. In any case, I find that, on a balance of probabilities, the landlord likely did tell the tenant not to remove the air-conditioners.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the air conditioners were obviously placed in the unit for a specific purpose and this would be evident to most renters. I find that the tenant violated the Act by taking the landlord's property out of the unit and then not replacing it at the end of the tenancy , thereby violating his obligation under section 37 of the Act to leave the unit in the same condition as when it was rented.

For the reasons discussed above, I find that the landlord's claim has met the test for damages and they are entitled to be compensated for the loss of the property wrongfully removed by the tenant.

However, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 40 in order to accurately assess what the normal useful life of a particular item or finish in the home would be.

I find that the average useful life of an air conditioner that is part of the building's mechanical infrastructure is set at 20 years. Finding no specific guideline for the life/duration of a portable air conditioning unit, I find that the average useful life expectancy for this type of appliance would not be less than 10 years. Accordingly, I find that the landlord is entitled to be compensated in the amount of $720.00 for the two air conditioners. The total monetary compensation to which the landlord is entitled is $780.00, comprised of $720.00 for the air conditioners, $10.00 for the bin and the $50.00 cost of the application.

The claim for the stove-top cleaning kit is dismissed.

I order that the landlord retain the security deposit of $200.00 in partial satisfaction of the claim leaving a balance due of $580.00.

Conclusion

I hereby grant the Landlord an order under section 67 for $580.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the landlord's application is dismissed without leave.

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: July 25, 2012.

Residential Tenancy Branch

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RTB-136

Now that you have your decision…

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
  Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
  Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
  Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
  Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
  Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
  (Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca