



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; RPP; FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord return the Tenant's personal property; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents were hand delivered to an agent of the Landlord on October 11, 2012.

The Landlord provided evidence to the Residential Tenancy Branch on January 3, 2013 and to the Tenant, by posting the documents to the Tenant's door on January 3, 2013. As these documents were not provided within the time frames set out in the Rules of Procedure, they were not considered in this Decision. The Landlord's agents were invited to provide verbal testimony with respect to the documents.

Issues to be Decided

- Should the Landlord be ordered to return the Tenant's personal property?
- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Tenant moved into the rental unit on July 1, 2006. The Landlord became the Tenant's new landlord in October, 2010.

The rental unit is a townhouse. There are exterior sheds for the use of the tenants in the townhouse complex. These sheds are not numbered or otherwise identified as belonging to any particular townhouse. Under the previous landlord, tenants were not required to pay for storage and the Landlord does not have keys for those sheds. Under the present Landlord, new tenants are required to pay for a storage shed and the Landlord has a key.

The Landlord's agents submitted that it was obvious which shed was for which townhouse because of the positioning of the sheds on the rental property. The Tenant stated that it was not so obvious and in any event, he has used a particular storage shed for 7 years and was told that he could use it by his former landlord.

The Tenant gave the following testimony:

The Tenant stated that he works in the mining industry and is away from the rental unit for weeks at a time. On October 9, 2012, after an absence of 4 or 5 weeks, he returned home to find that the deadbolt had been removed from his storage shed and all the contents were gone. The Tenant stated that he went to talk to the Landlord's agent who told him that they were unaware to whom the contents belonged and that they had contacted "the lady of the house", who said they were not the Tenant's. He stated that the Landlord has a cell phone number for the Tenant and that the Tenant's 16 year old daughter had gone to live with her mother at the time of the incident so the Landlord could not have spoken to the "lady of the house".

The Tenant stated that the Landlord's agent told him that his belongings had been taken to the dump. The Tenant seeks compensation for the loss of the following items that were removed by the Landlord:

1999 Ford tailgate	
Convertible top	\$1,300.00
4 20 litre jerry cans @\$20.00 each,	
full of fuel for a recreational vehicle	\$100.00
Battery charger, snow shovel, rake, paint	<u>\$100.00</u>
TOTAL	\$1,500.00

The Landlord's agents gave the following testimony:

The Landlord's agents stated that a new occupant moved into the townhouse situated beside the Tenant (#28) on September 14, 2012. The new occupant required a storage shed and the Landlord's agents noted that the shed allocated for the new occupant was unsecure and full of items. The Landlord's agents stated that the items appeared to be junk and were certainly worth less than \$500.00. The Landlord's agents stated that there were no jerry cans in the shed.

The Landlord's agents stated that the Tenant misunderstood when they said they had asked the "lady of the house" if the items were hers. They testified they were referring to unit #29 and a woman other than the Tenant's daughter. The Landlord's agent testified that the woman at #29 indicated that the items were not hers. The Landlord's

agent knocked on the Tenant's door (#27) and there was no answer. The Landlord did not leave a note on the Tenant's door.

The Landlord's agents testified that they left the items outside the shed for three days and then placed everything in the dumpster, including the tailgate. The Landlord's agents stated that the tailgate was rusty and not worth anything.

At the beginning of the Hearing, one of the Landlord's agents testified that the Landlord does not have a list of which locker belongs to which tenant. Later on in the Hearing, a different agent stated that the Landlord has a list.

Analysis

The Landlord has disposed of the Tenant's personal property and therefore I **dismiss** his application for an Order that the Landlord return the personal property.

The Landlord did not provide a copy of a ledger in evidence indicating which tenant was using which shed. The Landlord did not clearly number or otherwise indicate which shed was for each townhouse. I find that the Landlord did not make reasonable attempts to determine whose items were in the shed. When no one answered the Tenant's door, the Landlord did not leave a note for the Tenant. The Landlord did not phone the Tenant to determine if the items were his. The Landlord did not make a list of the items that were disposed of.

Section 91 of the Act provides that: "except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia." I find that the Landlord had no right under the Act to dispose of the Tenant's belongings. I find that the Landlord owed a duty of care to the Tenant under common law. I find that placing the Tenant's personal property in the dumpster is a breach of that duty of care and that the Tenant suffered a loss as a result of that breach.

In *Ashton v. Strata Corp.* VR524, [1999] B.C.J. No. 2429 (Prov. Ct.), a case of breach of bailment for reward, Dhillon Prov. Ct. J. wrote:

[49] The underlying principle in awarding damages is restitutio in integrum - to place the injured Party in the position he was in before the damage occurred, as best as can be done. In determining the proper measure of damages, the award must be reasonable both to the plaintiff and to the Defendant.

[50] The assessment of damages is a question of fact and based on the evidence, with the onus on the Claimant to prove the value of his loss on a balance of probabilities.

In *Bello v. Ren*, 2009 BCSC 1598, the Honourable Madam Justice Fenlon wrote:

[19] While the nature of the missing property and the value of the items must be proved by the tenant, the evidence must be weighed taking into account the difficulty a tenant faces in proving what is missing and what it is worth — a task made all the more difficult in this case because Mr. Bello's property was unlawfully seized and disposed of by the Landlord.

I accept the Tenant's evidence with respect to the items that were in his storage shed. However, the Tenant did not provide documentary evidence to support his claim that a tailgate is worth \$1,300.00. I accept his submission that 4 jerry cans filled with gas, are worth \$100.00 and that a battery charger, shovel, and rake are worth \$100.00, and allow the Tenant a nominal amount of \$200.00 for the loss of the tailgate.

The Tenant has been partially successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Tenant has established a total monetary award in the amount of **\$450.00**. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct his monetary award from future rent due to the Landlord.

Conclusion

The Tenant's application for an Order that the Landlord return the personal property is **dismissed**.

I find that the Tenant has established a total monetary award in the amount of \$450.00. Further to the provisions of Section 72 of the Act, **\$450.00 may be deducted from future rent due to the Landlord**.

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: February 01, 2013

Residential Tenancy Branch

