



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; RPP

Introduction

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

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's Notice of Hearing documents were provided to the Landlord by registered mail.

The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

Issues to be Decided

- Should the Landlord be ordered to return the Tenant's personal property?
- Is the Tenant entitled to compensation for the loss of his personal property?

Background and Evidence

The Tenant gave the following testimony:

The Tenant stated that he moved out of the rental unit in mid September of 2012 because he had lost his job and was not able to pay the rent. The Tenant stated that he was hoping that the Landlord would give him time to pay the rent, but the Landlord asked him to move and so the Tenant moved out. The Tenant stated that he removed some of his possessions from the rental unit and then went on a drinking binge. He stated that we ended up in the hospital for 8 days. The Tenant stated that he called the Landlord on October 5, 2012 and asked when he could pick up the remaining personal possessions at the rental unit, but the Landlord stated that he had thrown them out.

The Tenant provided a copy of a letter from a Mental Health and Addictions Counselor in evidence.

The Tenant stated that he did not give the Landlord permission to throw out his possessions, which included:

Description	Compensation claimed by Tenant
2 Technics speakers (7 years old, \$500.00 new)	\$150.00
Pioneer Receiver and amp (7 years old, \$350.00 new)	\$220.00
Sylvannia 26" television (older model, but worked fine)	\$100.00
Citizen CD player (Tenant paid \$75.00 6 months prior)	\$60.00
Kitchen small appliances, dishes, pots, pans, silverware, (new in 2011)	\$400.00
Work clothes (hard hats, work gloves, rain gear, winter pants and coat, winter boots, tools, tool belt and safety gear)	\$1,000.00
MP3 player (3 months old)	\$80.00
ID, photos of children and other treasured photographs for the past 10 years complete with the negatives, income tax papers, paid bills, baseball contract with Montreal Expos ('87 – 88)	\$1,000.00
TOTAL CLAIM	\$3,000.00

The Tenant stated that his personal papers are irreplaceable. He stated that he can never replace the photos of his kids or the pictures of him taken with the Montreal Expos and the contract that he signed with them when he was 17 and played in Vancouver in the Western Canadian finals. He testified that he was in the process of packing his personal papers into containers when the Landlord asked him to move out and he went on a drinking binge.

The Landlord gave the following testimony:

The Landlord stated that the Tenant left only one TV and a stereo/receiver, both of which were broken.

The Landlord stated that he had a Dispute Resolution Hearing on September 5, 2012, and was granted an Order of Possession and a Monetary Order for unpaid rent. The Landlord testified that the Tenant did not show up at the Hearing. The Landlord stated that he gave the Orders to the Tenant and the Tenant moved out on September 20, 2012. The Landlord testified that he disposed of the Tenant's possessions on or about September 27, 2012, after the Tenant told him he could dispose of them.

The Tenant gave the following reply to the Landlord's testimony:

The Tenant stated that he was never served with any papers for a Dispute Resolution Hearing in September, that he was never served with a Notice to End Tenancy, and that he has never seen the Decision from the Hearing, an Order of Possession or a Monetary Order. He stated that the Landlord told him he was going to file an Application for Dispute Resolution, but that he was never served.

Analysis

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

Part 5 of the regulations provides for how abandoned property must be dealt with at the end of a tenancy.

If personal property is abandoned, a landlord may remove the personal property from the rental unit, and on removal **must** deal with in accordance with Part 5 of the regulations, sections 24 to 30. Section 24 of the regulations states:

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner **for a period of not less than 60 days** following the date of removal,
- (b) **keep a written inventory of the property,**
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,**
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

(emphasis added)

In this case, the Landlord did not keep a written inventory, as required under Section 24(1)(b) of the regulations. He testified that the Tenant did not leave all of the items that the Tenant states he abandoned, and that the items were worth less than \$500.00 so he disposed of them. However, the Landlord did not comply with Section 25(1)(b) of the regulation and did not avail himself of the provisions of Section 25(3) and seek a determination from the Court with respect to the value of the items. The Landlord stated that the Tenant's possessions were worth less than \$500.00, but the Tenant's evidence shows that the TV, stereo and receiver alone were worth a total depreciated value of \$470.00 which is very close to the benchmark value of \$500.00. In addition, the Landlord stated that the Tenant gave him permission to take his possessions to the dump, but did not get that permission in writing and the Tenant denies giving it.

For the above reasons, I find that the Landlord was not prudent when dealing with the Tenant's abandoned property.

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 the provisions of Part 5 of the regulations and that the Tenant suffered a loss as a result of that breach. It is difficult, if not impossible, for the Tenant to prove the value of his loss because the Landlord has disposed of his possessions without making a list or seeking the Court's determination of worth. Therefore, I allow the Tenant's claim for compensation in the amount sought and hereby provide the Tenant a Monetary Order in the amount of **\$3,000.00**.

Conclusion

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

I hereby provide the Tenant with a Monetary Order in the amount of **\$3,000.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: February 04, 2013

Residential Tenancy Branch

