



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Garden Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, original tenant "AO's" tenancy began on November 15, 2012. Monthly rent of \$800.00 was due and payable in advance on the first day of each month, and a security deposit of \$400.00 was collected. When tenant "AO's" personal circumstances required that he temporarily leave town in mid-January 2013, he asked "RM" (the tenant / applicant in this dispute) if he would reside in the unit and care for his pets. "RM" testified that during the latter part of January 2013 he lived intermittently in the unit.

Later, "AO" determined that his absence from town was going to be more permanent than temporary, and he informed the landlord that "RM" was interested in taking over the tenancy. "AO" vacated the unit on or about February 9, 2013. Subsequently, "RM" moved into the unit and had the hydro put in his name. While the landlord sought to meet with "RM" and complete a formal written tenancy agreement, the creation of a written agreement did not ever come to pass.

Arising from rent of \$800.00 which remained unpaid when due on February 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated February 12, 2013. The notice was posted on the unit door on that same date. A copy of the notice was

submitted in evidence. "AO" and "RM" are both named as tenants on the 10 day notice, and the date shown on the notice by when they must vacate the unit is February 22, 2013. Subsequently, no further rent was paid.

The landlord's agent testified that she concluded "RM" had abandoned the unit; she reached this conclusion, in part, as the 10 day notice required the tenants to vacate the unit by February 22, 2012. Further, she testified that after the hydro was cut off to the unit on February 26, 2012, "RM" left without any notification to her of his plans, or of his new whereabouts. Finally, the landlord's agent testified that she does not consider that "RM" was a tenant within the generally understood meaning of that term.

On March 2, 2013, the landlord's agent's husband, "RD," undertook to remove all possessions that remained in the unit, and clean the unit in preparation for a new renter to take possession effective on or about March 7, 2013. "RD" was not present at the hearing, nor was there any written submission from him before me in evidence.

Thereafter, on March 4, 2013 "RM" returned to the unit inquiring about his possessions. With the exception of his backpack, which he claims was now empty, and a "box of kitchen supplies," he was informed that his possessions had all been discarded. "RM's" documentary evidence sets out an itemized list of possessions he claims were discarded, and they include, but are not necessarily limited to, CDs, miscellaneous clothing, shoes, a skateboard, books, toiletries, financial documents, knick knacks and work supplies. He estimates the conservative value of these belongings to be \$4,000.00. He testified that photographs of his now deceased father which had great sentimental value to him were also discarded. There appears to be no dispute that "RM" had packed up most of his possessions in boxes and left them in a generally tidy fashion before he left the unit in late February 2013.

The disposition of the security deposit remains unresolved, and the landlord has still not received any payment of rent for February 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 1 of the Act defines tenant as follows:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

Section 12 of the Act provides that **Tenancy agreements include the standard terms**, as follows:

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Based on the documentary evidence and testimony, I find that “RM” is a tenant within the meaning of the Act, and in the circumstances of this dispute.

Part 5 of the Regulation speaks to **Abandonment of Personal Property** (sections 24 to 30). In particular, section 25 of the Regulation addresses **Landlord’s obligations**, as follows:

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 the tenant or the 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 \$500.00,
- (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).

Based on the documentary evidence and testimony, I find that the landlord’s manner of disposing of possessions left behind in the unit by “RM” does not comply with the relevant legislation.

Residential Tenancy Policy Guideline #16 speaks to “Claims in Damages,” and provides in part as follows:

Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

An arbitrator may also hear a claim where there has been a breach of the common law of landlord and tenant. These are evolving legal principles set out by court decisions and may, or may not, be recorded in a tenancy agreement or set out in the Legislation.

Types of Damages

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In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered “pecuniary” losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered “non-pecuniary” losses.) Aggravated damages are designed to compensate the person wronged, for

aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

Criteria Considered When Awarding Damages

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If a claim is made by a tenant for damages for breach of the abandonment regulations by the landlord the normal measure of damages is the market value of the lost articles, i.e. the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant.

In the absence of pictures of any of the tenant's possessions, receipts or other evidence in support of the actual purchase price or market value, or detailed information about the age or condition of any of the possessions, I find on a balance of probabilities that the tenant has established entitlement in the limited amount of **\$2,500.00**. Accordingly, I hereby issue a **monetary order** in favour of the tenant to this effect.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$2,500.00**. Should it be necessary, this order may be served on the landlord, filed in the 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: April 11, 2013

Residential Tenancy Branch

