



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, RPP, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, return of her personal property; return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$4,000.00 for the loss of personal property?

Should the landlord be Ordered to return the tenant's personal property?

Is the tenant entitled to return of the security deposit paid?

Is the tenant entitled to the filing fee cost?

Background and Evidence

The tenancy commenced on November 1, 2012; rent was \$1,050.00 per month, due on the first day of each month. A deposit in the sum of \$500.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The following facts were not in dispute:

- January 2013 rent was paid;

- The police executed a warrant on the night of January 27, 2013; leaving the unit at 1:20 a.m.;
- The tenant and her co-tenant were both arrested on January 27, 2013;
- The tenants do not expect to be able to return to occupy the rental unit;
- That the tenancy ended effective January 31, 2013;
- That on February 1, 2013 the landlord allowed the tenant's mother to remove personal items belonging to the tenant; and
- That on February 1, 2013 the landlord retained other items, in lieu of unpaid February rent.

The parties confirmed that the tenant has yet to provide the landlord with a written forwarding address. The tenant's mother said the landlord knows where the tenant is being held and could use that address.

The tenant submitted a hand-written list of the items that are missing and that she believes the landlord has kept:

- 3 big-screen televisions;
- 4 laptop computers;
- 1 X-Box 360;
- 1 Blue-Ray
- Antique bar;
- Kitchen table and 6 chairs;
- TV stand;
- 70 – 100 DVD's;
- Surround sound system – brand new;
- 3 standing lamp; and
- Paint-ball equipment.

The tenant's mother said that the tenant could not prove the purchase of these items as the landlord has taken all of her belongings and receipts.

After February 1, 2013 there was no contact between the landlord and the tenant's mother until March 19, when the mother called, requesting a copy of the tenancy agreement. On March 25 a copy of the agreement was received and the landlord was again contacted.

The tenant's mother alleged that the landlord has kept items that had value and that the landlord's submission for this hearing was full of contradictions. The landlord first said that the rental unit had been looted and then said that the tenant's belongings were safely stored. The tenant was led to believe that her belongings were locked up and safe, but that the television she purchased on Boxing Day has been taken by the landlord. The landlord had placed 1 TV on the porch and another was in the home; both have gone missing.

The tenant's witness said that she over-heard the 2 telephone conversations that occurred between the landlord and tenant's mother in March 2013. She heard the tenant's mother ask if she could retrieve the belongings and that the landlord said the unit had been looted. The landlord was told to call the Residential Tenancy Branch to confirm that he was not allowed to hold the belongings in lieu of any claim he might have for unpaid rent.

The tenant's mother said that the antique bar was valued at \$3,000.00 and that the balance of the claim was for the remaining items taken by the landlord. The witness said she thought the antique bar was worth \$1,500.00; while the landlord valued that piece of furniture of \$300.00 to \$400.00.

A detailed inventory list of belongings and multiple photographs of those belongings were provided. Some of the photographs showed the state of the unit after the police had executed the warrant; the unit was in a completely disheveled state.

Thirty-two photographs of the items, accompanied by a numbered inventory list, including:

- The antique bar;
- A microwave, clock, rug;
- Telephones;
- Fans;
- Several set of speakers
- Kitchen table and chairs;
- DVD's;
- A play station and DVD player; and
- Multiple miscellaneous items

The inventory list indicated that some items belonged to the co-tenant, that some was miscellaneous furniture and kitchen items. Many of the items listed by the landlord matched those the tenant wishes to retrieve.

The landlord confirmed that he continues to hold the tenant's belongings and agreed that if he is not entitled to retain the items, in lieu of damage he has suffered, that the tenant's mother could retrieve the items. It was agreed that the mother could pick the property up on 1 of the next 2 Sundays.

The tenant's mother accused the landlord of forging the tenant's signature on the tenancy agreement; the tenant's evidence also included an allegation of criminal behaviour on the part of the landlord. The landlord was accused of calling the police, which resulted in the arrest of the tenant.

The landlord supplied a detailed time-line of events that unfolded in relation to the tenancy. On January 27 2013 the downstairs occupant contacted the landlord to tell

him the RCMP had been at the unit to execute a warrant and that after the police had left there had been people upstairs all night; doors were being opened and closed and that a ladder was leaning against the house. Within 1 hour the landlord arrived at the building; he found the door unlocked and the ladder against the home. He put the ladder away and went into the rental unit. The unit was a "disaster;" he could not tell if the mess had been caused by the police or looters; he did find a copy of the search warrant on a table. The landlord then confirmed that the 2 co-tenants were in custody. The police said the house had been locked after they had finished executing the warrant. While at the unit on January 27, 2013 a male who the landlord knew to be the tenant's ex-boyfriend wanted to take some items; he was asked to leave the property.

The landlord said that the tenant's mother arrived on February 1 and that she had no interest in removing the furniture, but the landlord was also not prepared to give those items to her, as he was owed money for damages. Many items were removed by the tenant's mother; 1 TV that was in a bedroom was not removed. Two computers that had been in the co-tenant's bedroom were given to the tenant's mother.

On February 5, 2013 a Shaw technician came to the home to retrieve equipment; he checked the TV that was left in the unit and determined it was not functioning. The landlord took that TV to the landfill for recycling.

On February 6, 2013 the tenant's boyfriend was allowed to retrieve items that belonged to him; a tote box, fax machine, hockey bag and paint ball equipment.

On March 7 the landlord assisted someone in removing items belonging to the co-tenant; property that was detailed in the inventory list.

Analysis

I find, pursuant to section 44(f) of the Act that the tenancy ended effective January 27, 2013, when the tenants were arrested, with no chance of return to the rental unit after that time.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Regulation sets out how abandonment of personal property is determined. In this case the parties dispute the events that occurred on February 1, 2016. The tenant's mother was allowed to take belongings and I do accept that the landlord believed he could retain some items of value, in an attempt to recoup a financial loss and that; as a result, he failed to allow removal of some property owned by the tenant.

Section 24 of the Regulation provides:

24 (1) *A landlord may consider that a tenant has abandoned personal property if*

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or*
- (b) subject to subsection (2), the tenant leaves the personal property on residential property*

- (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or*
- (ii) from which the tenant has removed substantially all of his or her personal property.*

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or*
- (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.*

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

There is no doubt that the tenant left her personal property at the rental unit; with no hope of returning. However, when the landlord told the tenant's mother that he could retain the property as collateral against a claim for damage, I find that the landlord erred. The tenant's mother was willing, on the tenant's behalf, to remove the items and, as the tenant's agent, I find she had the right to do so. The landlord would continue to have the right to submit a claim for any damage or loss that he believes he had suffered.

Despite the breach of the Regulation by the landlord I find that he did not act in bad faith. The landlord took extensive photographs of the rental unit and personal property and then created a corresponding inventory list which I found reliable. I find that any items that may be missing are just as likely the result of the tenant's own actions and that, on the balance of probabilities, it is also just as likely that the unit was looted during the night after the tenant's were taken into custody. The landlord cannot be held responsible for a legal arrest of the tenant, nor can he be held responsible for a possible break-in.

I have rejected the claim that the landlord has taken property as listed by the tenant and find, on the balance of probabilities that the 1 TV on the property was found to be of no value, after being checked by the Shaw technician. The tenant has failed to prove, on the balance of probabilities, that these items were present in the home and I have preferred the detailed submission made by the landlord. I found the landlord's record of the items he retained was thorough and believable, when compared against the claim of 4 lap-tops and 3 big-screen TV's, with no substantiation. If evidence of purchase was missing I find that blame cannot be placed on the landlord. From the photographs submitted it was clear that on January 27, 2013, after the arrest, the unit was essentially turned upside down.

As the tenant has been in custody since vacating the unit on January 27, 2013, I find that she has not suffered any loss of use of her property that was held by the landlord. She was not in a position to use the items and they have been safely stored by the landlord. Therefore, even though the landlord should have returned the items when asked for them; there was no corresponding loss to the tenant.

During the hearing the tenant's mother said she could retrieve the property on 1 of the next 2 Sundays. Therefore, I Order the landlord, pursuant to section 65(e) of the Act, to:

- be available to the tenant's agent on one of those 2 dates (May 19 or 26, 2013), for return of the property; and
- that the tenant's agent contact the landlord to determine the date and time they will arrive to retrieve the property

The tenant's mother must contact the landlord by telephone to confirm the date and time for retrieval between 8 a.m. and 7 p.m., or another time and date that is mutually agreed.

Therefore, in the absence of evidence that the landlord has disposed of any of the tenant's property I find that there is no loss and that the monetary claim is dismissed. The photographs showed the landlord is holding many items, including the antique bar, which the tenant is free to retrieve.

As the landlord has been Ordered to return the personal property the tenant's application has some merit and I find she is entitled to the \$50.00 filing fee.

Based on these determinations I grant the tenant a monetary Order in the sum of \$50.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

I find that the tenant's claim for return of the security deposit is premature. The tenant has yet to provide the landlord with a written forwarding address. Once she provides the written address the landlord must disburse the deposit in accordance with the Act; the landlord may not assume an address, it must be given in writing, by the tenant.

Conclusion

The landlord has been Ordered to return the tenant's personal property.

The monetary claim is dismissed.

The claim for return of the security deposit was premature.

The tenant is entitled to the filing fee cost.

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: May 17, 2013

Residential Tenancy Branch

