



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant's name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with an application by the tenant for an order returning personal property or, alternatively, awarding the tenant compensation for missing personal property. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to either of the orders requested and, if so, on what terms?

Background and Evidence

The tenant started renting in this building in 1993. He testified that part of the original agreement was that locker B10 was assigned to him and use of the locker was included in his rent. He testified that there was a written tenancy agreement for that unit and it not include any reference to the locker.

On February 1, 1995, the tenant moved into a different unit in the same building. A copy of that tenancy agreement was filed in evidence. It does not contain any reference to storage lockers or to locker B10 in particular. It does contain the following clause: "3.05 It shall be responsibility of the Tenant to insure his property against damage or loss by fire, water, theft or other perils."

Over time the tenant acquired two more lockers, D4U and D50U. He says he pays \$10.00 per month for those lockers. These lockers are half-size lockers and are located near the elevator he now uses. B10 is in a different part of the building. As it is not as convenient to his current unit over time B10 has become the locker where he stored items that he was keeping, such as family mementoes and collections, rather than items he was using. Items that he needed more often were kept in D4U and D50U.

The tenant said he did not go to B10 very often, and his wife, never. In answer to a question in cross-examination, the tenant said the last time he had been to this locker was about a year ago.

The tenant testified that every year for the past three years they have received a form from the landlord asking them to confirm their locker and parking spot numbers. He said that every year they completed the form listing all three lockers and returned the form to the landlord.

In January of this year the landlord again sent the inquiry form. The tenant was away working and his wife called him to confirm the locker numbers. On January 30, 2013, she went to look at B10 and found it empty.

The tenant testified that B10 was about four feet wide, six feet deep, and full ceiling height. In addition to important family mementoes such as a recording of his later mother's voice, he had numerous valuable collections and collectibles stored in this locker including an entire collection of the Classic Illustrated comic books, an entire series of Ballantyne Books, a stamp collection handed down from his great grandmother, and many models still in their original packages.

At one time he carried insurance on these items but he let it lapse. He did not have an inventory of the items; he was only going from his memory.

The landlord's witness testified that this company took over the building about six years ago.

There are four locker rooms containing over 200 lockers in total. Their practise is to sign a separate agreement and collect a separate rent for each storage locker. A lot of students live in this building so there is a high turnover. Since taking over the landlord has tried to gather and consolidate all the information about the lockers including who they are assigned to and what that person's agreement for payment is.

The witness testified that the completed inquiry forms are filed in the individual tenant files. On this tenant's file there is no response to their 2010, 2011 and 2012 inquiries. In addition, they have no agreements for D4U or D50U.

The landlord testified that the last time they did a locker clean out was in 2011 and they have not emptied any lockers since then.

The landlord filed copies of notices that were sent out in 2011. The notices are dated June2, 2010; August 5, 2010; and August 6, 2010. Each notice asked tenants who were occupying a storage locker to contact the office to claim their storage number or to obtain a lease for the locker. Each memo extended the deadline stated in the previous

memo. Each memo warned that failure to respond would result in reassignment of the locker space.

The landlord says copies of those memos were put under the doors of all units and posted in the building. The tenant says he never received or saw those memos.

On March 18, 2011, another notice was distributed in the same manner. This notice stated:

“We have sent numerous memos throughout . . . since 2010 to ensure that . . . does not dispose of any belongings in error. However, there are still a number of unclaimed lockers. For the residents occupying a storage space who have not yet responded to register their lockers; please claim your locker by March 18, 2011.”

The tenant said he never received a copy of this notice.

Every notice sent by the landlord contained the following warning:

“ . . . will not be held liable for loss or damage of any items kept in locker rooms. If you are storing any valuable items in the storage, please remove them and contain them in your unit.”

The landlord testified that the contents of unclaimed lockers were consolidated and marked as to which locker they came from. If any item had a name on it, they attempted to contact that person. The items were kept for a least three months before they were disposed of.

The landlord does not have a record of which lockers were emptied in 2011.

The landlord testified that in 2010 there was a flood in the basement, including the room in which B10 is located. There was about two feet of water and all the lockers in that room were damaged. They sent out several notices about the flood and have no record of the tenant contacting them in response.

When asked in cross-examination whether any of his items were damaged in the flood the tenant said he had never heard about a flood. In his rebuttal evidence the tenant said he never received any notices about a flood and it was unlikely that he would have left the locker alone for three years.

Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

I find that the tenant has been unable to meet the standard of proof for the first element of such a claim.

The tenant says he used locker B10 for twenty years; the landlord says they have no record of him ever using the locker.

The only evidence that the tenant used B10 and that it was filled with his belongings is his own oral testimony. There is no reference to the locker on either tenancy agreement; no copies of previous insurance coverage for the contents of the locker; no statement or oral testimony from any other person who may have seen the locker with items in it; no photographs; nothing.

Further, if the locker had been filled with so many valuable items, including books, comic books, stamps and photographs, it seems unlikely that the tenant would not have noticed or heard any information about the flood in 2010 or not have noted water damage to his possessions a year ago, when he says he last visited the locker.

The tenant's evidence is not sufficient to tip the balance of probabilities in his favour.

Conclusion

The tenant's claim is dismissed.

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: June 26, 2013

Residential Tenancy Branch