



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The named tenant and landlord called in and participated in the hearing. The applications were first set for hearing on May 28, 2013. The hearing was adjourned to allow the tenant to attend at the rental property to retrieve her belongings and to allow the parties to submit and serve evidence including additional evidence. The hearing was first adjourned to be heard on July 3, 2013, but it was further adjourned to July 25, 2013 when the claims were heard by conference call.

Since the matters was before me on May 28, 2013 the tenant has attended at the rental property and has picked up her belongings, although the tenant is claiming compensation for items said to be missing or to have been damaged due to improper storage by the landlord.. The landlord has filed her own application to claim a monetary award from the tenant. In her application the landlord claimed payment of the sum of \$2,648.61 for lost rent, repairs and cleaning. The landlord later sought to enlarge that claim without amending it by submitting documents as evidence claiming additional amounts. Because the landlord has not filed and served an amended application for dispute resolution, I will not consider claims for additional amounts beyond what is stated in the landlord's application for dispute resolution.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a manufactured home on a foundation with a partial basement located on the landlord's property adjacent to the location of the landlord's residence. The

tenancy agreement provided for monthly rent in the amount of \$550.00 to be paid on the first of each month. The tenancy was for a one year term, ending September 30, 2013. The tenant paid a security deposit of \$550.00 on September 25, 2012. The landlord and the tenant gave conflicting evidence concerning the security deposit. The landlord testified that she collected a full month's rent as a deposit because it was contemplated that the tenant might get a pet after the tenancy began. The landlord also said that extra amount was for a power deposit to go towards the electrical bill. The tenant said that the landlord demanded a deposit equal to full month's rent because the landlord said her former tenants left the rental unit in a terrible mess and she wanted the larger deposit in case the rental property was not left in good order.

The landlord testified that the tenants came to see the rental unit in late September. They came with two small children. The tenant, R.P. told the landlord that she was recovering from a bad car accident and her partner said that he was working in a trade, but was off work at times due to a disability. The landlord testified that the tenants told her they needed a rental unit immediately because the people where they were currently staying were using drugs in the presence of the children and it was unsafe for them to live there. The landlord said the tenants could move in early. She received a \$550.00 deposit and one month's rent. The tenants came to the landlord's house on October 1, 2013 and signed the tenancy agreement.

The landlord said that she visited the tenant at the rental unit on October 29th and saw that the tenants had used all the stored firewood to heat the unit. There was no oil for the furnace and they had no means of heating the rental unit; they were using the stove burners and oven for heat. The landlord told the tenant that she needed to buy oil for the furnace and get her own supply of firewood. The tenants said they would order oil, but the landlord later checked with the oil supplier and found that oil had not been ordered. The tenants then paid the landlord \$1,000.00 for oil and the landlord ordered and paid for oil on the tenant's behalf. The landlord also replenished the tenants' supply of wood.

The tenant testified that in January she left her boyfriend, the co-tenant and moved out of the unit on January 6, 2013. The co-tenant moved out of the rental unit a few days later. The tenant said she visited the landlord and explained that she was leaving an abusive relationship and might not have the rent on time. The tenant said that she returned to the rental property on February 7th and found a Notice to End Tenancy for unpaid rent on the door. The door was padlocked and she could not get into the rental unit. She said she tried to telephone the landlord, but was not able to speak to her. She left the rental property and did not go to the landlord's house on the adjacent

property to attempt speak to her. The tenant said that when she next returned to the rental unit on February 11th, all her belongings had been moved out of the unit.

The Tenant submitted her application for dispute resolution on February 26, 2013, seeking compensation for her possessions. The tenant testified that after the May 28, 2013 hearing she contacted the landlord to arrange to attend to pick up her belongings from the rental property. She said that she arranged to pick up her goods on June 8th, but in a telephone conversation on June 7th to confirm the meeting the landlord told her that she now wanted the RCMP to be in attendance because she had found drugs in the tenant's belongings. According to the tenant, she denied the accusations and said she was not a drug user and she would attend on the 8th to pick up her things. The landlord then told her that she was busy on the 8th and also said that there was a new tenant living in the rental unit where her goods were stored.

The tenant attended to collect her belongings on June 11, 2013. She had an RCMP officer attend with her and she brought friends with a trailer. The tenant said her goods were stored improperly. They had been placed in the basement of the trailer in a large jumbled mess. The tenant said that there were new occupants in the trailer and they had pets. The tenant said she noticed the smell of mould, mildew and cat urine as soon as she entered the basement storage area.

The tenant said that some of her belongings were missing and the remainder were damaged by mould, mildew and mouse droppings. Many items had been chewed by rodents. There was even a live frog inside the storage area, indicating the moisture level where the items were stored. The tenant said that most of her belongings were so damaged and contaminated they had to be discarded. She said that because her son suffers from severe asthma she could not bring items tainted by mould into her home.

The tenant submitted a list of her missing and damaged belongings. The list consisted of three close typed pages of items with a price affixed to each and a statement of the nature of the damage to the item. Among the items said to be missing the tenant listed the following:

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|--|------------|
| • Custom Log Table 4 chairs/bench/Buffer Hutch | \$1,500.00 |
| • 50 inch Plasma TV 440/450 series SAMSUNG | |
| Blu-ray Home Theatre System SONY | \$949.41 |
| • Iron Clock | \$24.97 |
| • Decor Bowl x2 | \$19.96 |
| • New Unopened Timmie gist set | \$12.99 |

• New unopened Metal can turtles	\$9.99
• Size 8 pink green Fox Shoes	99.00
• Black Dc shoes/Black Fila shoes new	\$117.58
• Area Rug	\$399.00

In the application for dispute resolution the tenant claimed a monetary order in the amount of \$18,600.00. In her list of damaged and missing goods the tenant stated the monetary total of the listed items at \$27,551.11. The tenant provided copies of some receipts for items that were set out in her list, but many items could not be correlated to the list.

The landlord said that the tenant telephoned her on January 7th and asked to speak to her. She met the tenant at the rental unit. The tenant was there with her sister and older son. She told the landlord she had broken up with her boyfriend because he was abusive and dealing drugs. The tenant told her that she going to visit a friend in Alberta and then stay with her parents. She asked the landlord to check on the rental unit for her while she was gone. The landlord told her she would check on the rental unit because she didn't want the pipes to freeze. The tenant told her she was going to continue renting the unit. The landlord said that when she next checked on the unit the lights were on and the cupboard doors were closed, even though the landlord had instructed the tenant to leave them open to prevent the pipes from freezing. She left a message with the tenant's father to have the tenant call her. The tenant called three days later. The landlord told the tenant she needed wood and the oil was running low. The landlord said she did not hear from the tenant until January 28th when the tenant called and said she would be a couple of days late paying the rent for February. The landlord told her the rent was due on the first of the month. The landlord said that she also told the tenant that her BBQ, her television, DVD player and stand were gone from the rental unit. She said that the tenant told her she had sold these items and that she would be selling her pine table, chairs, bench and hutch so she could pay the rent. The landlord said that the tenant apparently came during the night and picked up the table, chairs and other items. During the hearing the tenant said that her co-tenant had not removed any belongings from the rental unit, but she also acknowledged that she had not met with or spoken to him and he was not available to give evidence even though he was named as a party in the tenants' application.

The landlord testified that she posted a 10 day Notice to End Tenancy for unpaid rent to the door of the rental unit on February 2, 2013. She put her own padlocks on the doors to the rental unit. Although it had only been five days since she spoke to the tenant, the landlord said she thought the rental unit had been abandoned by the tenant.

The landlord said she checked the rental unit on February 7th and the Notice was still posted on the door. She came back on February 8th at 9:00 A.M. The Notice was gone. She went into the unit with two other people to pack up the things that were left and clean up the garbage. She said the place was a mess. Some things had already been packed in boxes and were sitting in the hallway. The landlord said that someone had broken into the rental unit by breaking a window and had pried open a second window from the inside. The landlord said that she called the RCMP and an officer attended at the rental unit and gave her a police file number with respect to the incident. The landlord said she and her helpers packed up all the tenant's belongings and moved them downstairs into a basement bedroom.

The landlord applied for a monetary claim in the amount of \$2,648.61. She claimed payment of the following amounts:

• Replacement of windows 2 master bedroom	\$508.96
• 1 hallway	\$286.16
• 6% freight	\$47.70
• Installation	\$270.00
• Inside carpet 6 feet X 4 fee	\$40.00
• Missing curtains	\$30.00
• Power bill Jan 1 – Feb 28	\$204.79
• Drain stopper kitchen sink	\$6.00
• 15 bags of garbage hauled to dump	\$30.00
• Plus gas & labour	\$45.00
• Feb rent	\$550.0
• 3 people X 6 hours packing and moving to storage	\$360.00
• Cleaning 2 people X 5hrs	\$200.00
• Clean fridge stove and deep freeze	\$20.00

Total: \$2,598.61

The landlord did not submit any invoices to support her monetary claims for replacement windows or other listed items. She did not provide a copy of the utility invoice.

Analysis

The Residential Tenancy Regulation contains provisions with respect to abandonment of a tenant's property. The Regulation provides as follows:

Abandonment of personal property

- 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.

The tenant paid rent for January and according to the landlord's evidence the tenant spoke to the landlord on January 28th and confirmed her intention to continue renting the unit, although she said that she might be late paying the rent for February. According to the landlord, she determined on February 8th that the tenant had abandoned the rental unit. There was no valid basis under the Regulation for the landlord's determination that the tenant had vacated the rental unit and abandoned her personal property; When the landlord removed the tenant's belongings on February 8th, the rent had only been outstanding for a week and as recently as January 28th the tenant told the landlord that she intended to continue her tenancy. The landlord was not entitled to engage in a self-help remedy by removing the tenant's belongings. She was required under the *Residential Tenancy Act* to file and serve an application for dispute resolution and to obtain an order for possession and only then proceed to enforce the order for possession in accordance with the provisions of the *Residential Tenancy Act*. Even had the tenant abandoned her property, which I find she did not, the landlord was under an obligation to make a written inventory of the tenant's property and to store the property in a safe place and manner as set out in section 25 (1) reproduced below:

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.

Section 30 of the Regulation places the landlord under a duty of care when dealing with a tenant's personal property; the section provides that:

Landlord's duty of care

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

I accept the tenant's testimony that she had not abandoned her belongings and that they were stored improperly by the landlord. I find that the tenant's testimony, witness statements and pictures establishes that the landlord did not exercise reasonable care and caution as required by the Act and Regulation when dealing with the tenant's possessions. The landlord did not prepare an inventory of the goods and I find that she put them in a damp basement where they were vermin infested and exposed to mould and mildew. I find that the tenant's belongings were damaged as a result of the landlord's lack of care. The landlord re-rented the unit, save for the basement room where the tenant's belongings were stored. The landlord did not say when she re-rented the unit.

I do not, however, accept the tenant's three page list of her goods as an accurate statement of her goods lost or irreparably damaged due to the landlord's improper conduct and lack of care in dealing with them. I accept that some of the goods listed by the tenant were removed, either by her, or by someone else, with her knowledge. It may also be that certain of the goods were stolen before the landlord became responsible for their safekeeping by removing and storing them; the landlord reported the break-in to the police and I find it improbable that the landlord would have kept or sold significant and identifiable belongings of the tenant while at the same time making a police report. The goods that I find were not in the landlord's care when she removed and packed the belongings, and for which she was not responsible, are the television, DVD equipment and furniture, including kitchen table, chairs, bench and buffet hutch, an iron clock and the tenant's tattoo and piercing equipment and supplies.

The tenant submitted an extensive list of goods with stated retail values, said to be damaged and unusable. The tenant submitted some receipts, but the receipts cover only a small portion of the items claimed and a number of the receipts are for food and perishable and consumable items. I am not satisfied that all the items listed by the tenant are unsalvageable. The tenant did not provide evidence of any efforts that she took to clean or launder items that had been stored. Although I have accepted that the tenant did not abandon the rental unit or her personal belongings, I note that her personal circumstances were chaotic and unpredictable and that she exhibited a

cavalier attitude towards her responsibilities as a tenant and to the security of the rental unit. The tenant did not provide evidence that she made any efforts to communicate with the landlord to obtain access to the rental unit on or after February 7th until she filed her application on February 28, 2013; thus I find that the tenant is not entirely blameless concerning the damage to and loss of her belongings.

There is no doubt that the tenant suffered a loss as a consequence of the landlord's actions. Section 7 of the *Residential Tenancy Act* provides that: "If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results". The fact that the tenant's damages may be difficult to assess does not mean that the tenant should not be compensated for the loss caused by the landlord's breach of her obligations under the Act, the tenancy agreement and the Regulation. I have determined that in all the circumstances I must assess damages by awarding the tenant a lump sum for her goods, taking into account the tenant's evidence, including photos, her list of goods and the factors I have set out in these reasons. In so doing I note the comment of McEachern C.J.B.C. in *Begusic v. Clark Wilson & Co.*, (1991) 57 B.C.L.R. 273 at p. 290, where he said that: "The assessment of damages is not a precise science; it is not even a calculation".

I find that the appropriate award to the tenant for her damaged belongings and loss of items is a global and all-inclusive award in the amount of \$6,000.00.

Turning to the landlord's claim, I find that the tenant failed to pay rent for February when it was due and I find that the landlord is entitled to an award in the amount of \$550.00, but I do not allow any other amounts claimed by the landlord. The landlord has not shown that the tenant should be responsible for repairs because someone broke into the rental unit when the tenant was absent and in any event the landlord has not provided invoices to support the items claimed. With respect to a utility charge the landlord has not provided an invoice and this claim is denied. The landlord has claimed compensation for her own wrongful acts of improperly removing and storing the tenant's belongings. The landlord should not be compensated for breaching the provisions of the Act and Regulation. The landlord claimed for cleaning, but the tenant was improperly evicted and was not given an opportunity to perform any cleaning before the tenancy ended; therefore the landlord's claims for cleaning, garbage removal and repairs are denied as well. I decline to award a filing fee to the landlord in light of the outcome. The landlord holds a security deposit in the amount of \$550.00 and I order that she retain the security deposit in full and final satisfaction of her claims in the landlords' application for dispute resolution.

Conclusion

The tenant did not pay a filing fee for her application and consequently I make no award with respect to a filing fee for the tenant's application. I grant the tenant a monetary order under section 67 in the amount of \$6,000.00. This order may be registered 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: September 11, 2013

Residential Tenancy Branch

