



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlord to return the tenant’s personal property.

The landlord, two of the landlord’s daughters, the tenant and the mother of the tenant attended the hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The landlord received the tenant’s evidence prior to the hearing and had the opportunity to review the evidence prior to the hearing. The landlord did not submit any evidence in response to the tenant’s application. The tenant submitted four photos late and therefore not in accordance with the rules of procedure. As a result, the four photos submitted in evidence by the tenant were excluded from the hearing.

Settlement Agreement

During the hearing, the parties reached a settlement agreement regarding the return of the tenant’s remaining personal property including a chest, vacuum cleaner with hose, laundry basket and CD player from the rental unit on the following conditions:

1. The landlord will permit the tenant to return to the rental unit to pick up the tenant’s remaining personal items described above as long as the tenant gives at least 1 hour notice by phone by **June 22, 2013**.
2. If the tenant does not attend to pick up any remaining personal items described above by June 22, 2013, the landlord is permitted to dispose of the tenant’s remaining personal items as of **June 23, 2013**.

Issue to be Decided

- Is the tenant entitled to compensation for the loss of his personal property under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a month to month tenancy began on October 24, 2011. Monthly rent in the amount of \$600.00 was due on the first day of each month. The tenant paid a security deposit of \$300.00 at the start of the tenancy.

The tenant has claimed \$10,000.00 which has been categorized into groups and assigned letters and numbers for ease of reference as follows:

| | |
|---|------------|
| Group A 1. 7 suits valued at \$1,400.00 2. 3 leather jackets valued at \$800.00 3. 3 pairs of Nike shoes valued at \$350.00 4. 10 shirts valued at \$200.00 5. 10 pairs of jeans valued at \$500.00 6. Electrolux Vacuum Cleaner valued at \$150.00 7. 6 pairs of shorts and 6 pairs of sweat pants valued at \$300.00 8. 2 laundry baskets valued at \$40.00 9. 5 pairs of dress pants valued at \$200.00 10. 2 gym bags valued at \$40.00 11. 1 back pack valued at \$25.00 | \$4,000.00 |
| Group B 1. 3 sets of bed sheets valued at \$50.00 2. 3 comforters valued at \$150.00 3. 4 pillows valued at \$50.00 4. 10 pounds of protein powder valued at \$70.00 5. Creatine pills valued at \$40.00 6. Vitamins valued at \$100.00 7. Toothpaste, brushes, shampoo and body wash valued at \$50.00 8. Bathroom cleaning supplies valued at \$100.00 9. 2 paintings valued at \$200.00 10. Books and magazines valued at \$200.00 | \$1,010.00 |
| Group C 1. 3 piece leather sofa set- paid \$5,000.00, valued at \$1,500.00 | \$3,640.00 |

| | |
|---|--------------------|
| 2. 30 CD's valued at \$300.00 3. 10 DVD's valued at \$200.00 4. 24" television valued at \$100.00 5. 2 blenders valued at \$80.00 6. 3 pressure cookers valued at \$120.00 7. 2 sandwich makers valued at \$80.00 8. Fine china tea pot and 4 cups still new in boxes valued at \$150.00 9. 4 frying pans valued at \$60.00 10. Silverware – spoons, forks and other utensils valued at \$150.00 11. Cups and glasses valued at \$100.00 12. Groceries – valued at \$600.00 | |
| Subtotal | \$8,650.00 |
| Group D 1. 4 picture albums of tenant's wife and children (tenant wrote that value was "priceless" as wife passed away over 3 years ago – estimated at 2,000 photos in total) valued at \$1,350.00 | \$1,350.00 |
| TOTAL | \$10,000.00 |

Evidence related to the end of the tenancy:

The parties were asked how the tenancy ended. The tenant stated that he paid his rent late on March 16, 2013 for the months of February and March 2013. The tenant stated that he went into the hospital on March 17, 2013 for a period of six days due to a heart attack and was released on March 23, 2013. On March 30, 2013, the tenant stated that he suffered another heart attack and was admitted to the hospital on that date and was released after approximately three weeks on either April 18th or April 19th, 2013; and rent for April 2013 was never paid.

The landlord testified that on February 5, 2013 the landlord wrote a letter to the tenant asking the tenant to pay his rent on time. On February 18, 2013, the landlord stated that he wrote another letter to the tenant about his late rent payments, however, confirmed that the February 5, 2013 or February 18, 2013 letters were not proper 10 Day Notices to End a Tenancy for Unpaid Rent under the *Act*.

The landlord testified that he wrote to the tenant on March 1, 2013 stating that the tenant had to vacate the rental unit on March 31, 2013, however, the landlord confirmed

that he did not use the proper 1 Month Notice to End a Tenancy for Cause as required under the *Act*.

The mother of the tenant, CB, testified that she personally advised the landlord that her son was in the hospital having suffered from a second heart attack in early April 2013. The landlord confirmed that the mother of the tenant, CB, did advise him that the tenant was in the hospital in early April 2013. The landlord testified that they entered the tenant's rental unit without notice and began to remove the tenant's personal items in the afternoon of April 15, 2013. The landlord confirmed that he did not post any notice at the rental unit prior to entering the rental unit on April 15, 2013 and began to remove the tenant's personal items.

The daughter of the landlord, RS, testified that she overheard a conversation between her dad and the tenant on March 23, 2013 where she alleges the tenant saying that "If I am not around for awhile, I am in Edmonton to start fresh...you can sell my things to pay the rent" and that her dad stated to the tenant that he did not want the tenant's things as he would have to take them to the dump. The tenant denies having made this statement to the landlord or his family members.

Evidence related to the tenant's monetary claim:

For ease of reference, I will refer to the each item being claimed by their associated group letter and number as described above.

As the parties have mutually agreed to the tenant returning to the rental unit for the purpose of picking up the following personal items of the tenant, these items and their value assigned by the tenant have been deducted from the tenant's claim:

- One laundry basket (group A, item 8) valued at \$20.00 for one basket
- Vacuum cleaner with hose (group A, item 6) valued at \$150.00
- CD player (was not claimed, therefore no deduction from monetary claim)
- Chest (was not claimed, therefore no deduction from monetary claim)

The tenant stated during the hearing that he was able to salvage a chair valued at \$500.00 from the \$1,500.00 three piece sofa set being claimed. Therefore, the total amount deducted from the tenant's monetary claim is \$170.00 comprised of one \$20.00 laundry basket and a \$150.00 vacuum cleaner with hose, plus the \$500.00 chair described above, for a total deduction of \$670.00 from the tenant's original \$10,000.00

claim. The amended monetary claim balance after deducting \$670.00 is reduced to \$9,330.00.

The tenant described the value of the family photo albums including pictures of his wife who passed away over three years ago after a twenty-year marriage and the related photo albums. The tenant claims that there were approximately 2,000 photos total that were thrown away or destroyed by the landlord or a family member of the landlord and that he had to assign a value to the photos for the purposes of his monetary claim. As the other portion of his claim totalled \$8,650.00, the tenant stated that he assigned a value of \$1,350.00 to come up with a total monetary claim of \$10,000.00.

The tenant testified that he was unable to provide receipts or photos of the items being claimed because most of his personal items had been thrown out by the landlord and he did not think to take photos of the items left outside where they were destroyed by the rain and as he was still recovering from his second heart attack and was very stressed at that time.

The tenant's mother testified that she purchased seven wedding suits for her son between three and four years ago and that she had also purchased three leather jackets for her son, both of which were items being claimed by the tenant. The landlord's daughter RS stated that all clothes were put into garbage bags which included wet clothes which were all over the rental unit and denies that there were any suits or leather jackets or Nike shoes. The landlord's daughter RS did confirm there was a backpack but claims the garbage bags were left in the suite and not outside. Although the landlord's daughter RS initially denied that the tenant's personal items were placed outside, she later confirmed during the hearing that the tenant's furniture was placed outside and then covered with tarps for two days.

The tenant stated that on April 20, 2013 when he attended the rental unit he was advised by the landlord or one of his family members that he was not allowed back into the rental unit. The tenant disputes the testimony of RS by stating that it was closer to one week and not two days that his personal items were left outside and that it was raining which caused the items that were not already thrown away to be destroyed by rain. This was supported by the tenant's mother.

The landlord claimed that the tenant picked up one of the paintings listed in the tenant's personal items being claimed. The tenant stated that the painting had been left outside and was wet from the rain and therefore destroyed. The landlord claims the tenant's son picked up the tenant's photo albums, however, the tenant stated that the photo albums were not in any of the boxes and that there was nothing that could be saved except for

the one chair worth \$500.00 which was deducted from his monetary claim as indicated above.

The landlord testified that he did not make a list or take any photos of the tenant's personal items and did not provide any evidence that he assigned a value to the tenant's personal items, or that he made an application to court to determine the value of the property.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I will first address how the tenancy ended. The landlord confirmed that he did not issue a proper 10 Day Notice to End Tenancy for Unpaid Rent to the landlord and chose to write a letter to the tenant regarding late payments of rent. Furthermore, the landlord confirmed that he did not issue a proper 1 Month Notice to End Tenancy for Cause under the *Act* and also did not provide notice to the tenant before entering the rental unit on April 15, 2013. In addition, the landlord confirmed that the tenants personal items were removed from the rental unit without the tenant's permission as the tenant had failed to pay rent for April 2013, even though he was aware that the tenant was in hospital after having been advised by the tenant's mother in early April 2013.

Based on the above, **I find** the landlord did not end the tenancy in accordance with the *Act* and breached section 29 of the *Act* by entering the rental unit without proper notice. The tenant denies that he abandoned the rental unit and the landlord confirmed that he had been advised by the tenant's mother that the tenant was in the hospital in April 2013. Even if the landlord did consider the tenant's personal items to have been abandoned, the obligations for a landlord removing personal property from the rental unit **must** be dealt with in accordance with Part 5 of the regulation, section 24 to 30. Section 25 of the regulation 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).**

Based on the testimony of the landlord, **I find** the landlord failed to comply with the requirements of section 25 of the Regulation by failing to store the tenant's personal property in a safe place for no less than 60 days and failing to keep a written inventory of the tenant's personal items. The landlord failed to present any evidence that he assigned a value to the tenant's property of less than \$500.00 or that he applied to the court to determine the value of the tenant's property. Furthermore, the landlord did not submit any documentary evidence in response to the tenant's claim.

The landlord's daughter RS testified that the tenant's personal items were not stored outside in the rain, however later in the hearing she confirmed that some items were removed and placed outside but were outside for only two days and covered in tarps. The tenant and the tenant's mother testified that they attended the rental unit approximately five days after the landlord indicates they tenant's personal items were removed and that the tenant's personal items were damaged by rain. I prefer the testimony of the tenant's mother as the tenant's mother testimony was consistent throughout the hearing and did not change her testimony during the hearing. Furthermore, I do not accept the testimony of the landlord's daughter RS, claiming that that the tenant stated to her father "If I am not around for awhile, I am in Edmonton to start fresh...you can sell my things to pay the rent". Firstly, the tenant denies making that statement and secondly, that statement does not sound plausible and is vague.

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 breached the *Act* on several occasions. Firstly, the landlord breached the *Act* by entering the rental unit without proper notice in accordance with section 29 of the *Act*. Secondly, the landlord breached the *Act* by failing to end the tenancy in accordance with section 44 of the *Act*. **I find** the landlord not comply with the provisions of Part 5 of the Regulations even if the landlord did consider the rental unit to be abandoned, which I do not accept as the landlord confirmed that the tenant's mother advised him that the tenant was in the hospital.

For the landlord to have ended the tenancy in accordance with the *Act*, the landlord should have issued either a 10 Day Notice to End Tenancy pursuant to section 46 of the *Act*, or a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, both of which the landlord failed to do.

As a result of the above, **I find** the tenant has suffered a loss as a result of the multiple breaches by the landlord. It is difficult, if not impossible, for the tenant to prove the value of his loss because the landlord has disposed of many of the tenant's possessions without making a list or seeking the Court's determination of worth, and on the balance of probabilities, the remaining items were destroyed by rain.

The *Act* provides for rights for both the landlord and the tenant and the landlord had no right to enter the tenant's rental unit while he was in the hospital and remove and dispose of the tenant's personal property. As a result, **I find** the landlord is responsible for the full cost of the items as claimed by the tenant. **I find** that the values assigned to each item by the tenant are reasonable.

Therefore, **I allow** the tenant's amended monetary claim for compensation in the amount sought of \$9,330.00. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$9,330.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The parties agreed to a settlement agreement regarding the return of the remainder of the tenant's personal items as described above. I order the parties to comply with their settlement agreement under section 63 of the *Act*.

I find the tenant has established a total monetary claim of \$9,330.00 due to the landlord breaching the Act and regulation as described above. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$9,330.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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