



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

RPP, MNDC

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking the return of missing abandoned property or compensation of \$4,000.00.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The participants had an opportunity to submit documentary evidence prior to this hearing, and this evidence has been reviewed. The parties were permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was served.

Preliminary Matters

Service of the Hearing Package

The landlord testified that they did not receive the hearing package within 3 days of the tenant's application. The application was filed and processed on July 23, 2014 and he did not receive the hearing documents until July 28, 2014.

The landlord stated that it is his position that this hearing should not go forth as the tenant did not serve the hearing package in accordance with the Act. The landlord pointed out that the Act requires service by registered mail or in person, but instead the tenant affixed the Notice of Hearing to the door of the landlord's former office address. The landlord alleged that the tenant left the package at the site on a Friday evening, July 25, 2014, after the close of business.

Although the landlord acknowledged receiving the documents on July 28, 2014, the landlord still objected to the hearing proceeding on the basis of the noncompliant method of service. The landlord also stated that he was not prepared to submit any evidence, due to the inadequate and noncompliant method of service of the hearing documents. The landlord also objected to the tenant's failure to provide evidence supporting the tenant's monetary claims and, according to the landlord, this impeded the landlord's efforts to provide evidence.

I accept that the tenant served the documents in a manner not compliant with the Act. I also accept that the landlord did receive the hearing documents in sufficient time to prepare for the hearing. As the hearing package was received by the landlord on July 28, 2014 and the hearing was to be heard on September 23, 2014, I find that the landlord was not prejudiced by the noncompliant service method and was given enough time to submit their own evidence for this hearing.

Tenant's Late Evidence

The tenant brought a document and attempted to submit it during the hearing. The tenant stated that the material contained information with respect to the value of the abandoned property. However, this evidence was not accepted as it was not properly served on the other party nor submitted in advance of the hearing as required under the Act.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to an order forcing the landlord to return the tenant's missing property?
- Is the tenant entitled to monetary compensation for the loss of abandoned property not returned by the landlord?

Background and Evidence: Landlord Application

The landlord testified that the tenant occupied the unit from January 6, 2006 until the tenant was evicted in June 2013. The landlord testified that the tenant's possessions were packed up and removed to storage by the bailiff hired by the landlord.

The tenant stated that when he paid the storage fees and in September 2013, he found that some items were damaged and two valuable items were missing. According to the tenant, he had installed a costly crystal chandelier in the dining room and had left some mezuzahs affixed to the door frames. The tenant explained that a mezuzah is a Jewish symbolic religious item that contains prayers or chapters from the Bible and each is worth approximately \$200.00. The tenant testified that, when he requested the return of these items, the landlord was rude, uncooperative and stalled the tenant.

The tenant seeks an order to force the landlord to surrender the items, failing which the tenant expects to be compensated by the landlord in the amount of \$4,000.00.

The landlord stated that the items, if they existed at all, are no longer available. However, the landlord was not able to testify with respect to what happened to them. The landlord pointed out that, if the tenant left a fixture, it had been installed without the landlord's knowledge or permission. The landlord acknowledged that no move-out

condition inspection report had been completed and therefore there is no record of what had been left in the unit affixed to the walls or ceilings.

The landlord testified that they merely left the removal of the tenant's possessions to the bailiff. The landlord acknowledged that they failed to complete a written inventory of the tenant's property and the landlord did not know whether or not the bailiff had done this.

The tenant testified that he never received a written inventory of the items removed to storage from his unit, nor an accounting of the property discarded by the landlord.

Analysis:

With respect to an Applicant's right to claim damages from the another party, Section 7 of the Act states 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. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In regard to the tenant's claim for \$4,000.00 compensation for lost property that had been retained in the care of and under the control of the landlord, I do not accept the landlord's argument that the tenant's violation of the Act in being evicted renders the landlord free of their responsibility to handle all possessions left in the unit is strict accordance with the Act.

I find that the Act imposes certain obligations on a landlord in relation to how a tenant's property is handled.

Section 24(1) of the Residential Tenancy Regulation states that a landlord may only 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 leaves personal property in the rental unit that the tenant has not occupied for a continuous period of one month and for which he or she has not paid rent, or from which the tenant has removed substantially all of his or her personal property.

However, section 24(2) states that a landlord is not entitled to consider the above circumstances in section 24(1) unless the landlord has received an express oral or written notice of the tenant's intention not to return to the residential property, or there is some indication that the tenant could not reasonably be expected to return to the residential property.

In this instance I find that the landlord could not reasonably conclude, under the circumstances that the property was abandoned.

However, even if the property was genuinely abandoned, I find that the landlord was required to comply with section 25 of the Regulation which states that the landlord must 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 and keep a written inventory of the property. In this instance I find that the landlord did store most of the tenant's property safely, but failed to keep the required written inventory.

According to section 30 the landlord also owes a duty of care to the tenant when dealing with a tenant's personal property and must exercise due diligence and caution as required by the nature of the items to ensure that the property is not damaged, lost or stolen.

Given the above, it follows that the landlord should not purposely dispose of any portion of property left in the unit belonging to the tenant and should keep a written account of any property that has been removed and stored, but also property that has been disposed of.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

In this instance I find that the landlord failed to do the required move-out condition inspection report. I find the failure to comply with this section of the Act has undermined the landlord's ability to assess what property had been left in the unit by the tenant.

In addition, section 26(3) of the Act states that, whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not:

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

In the absence of any documentation by the landlord including the move-out condition inspection report, the mandatory written inventory of the tenants possessions being removed and a written report on the disposition of property disposed of I find that I must rely on the tenant's account of what was missing and I therefore accept that the tenant lost the two possessions being claimed.

I find that it is not possible to order the landlord to return or even replace these missing items and therefore the only remedy is monetary compensation. The tenant stated that the value of the items is approximately \$4,000.00 but did not provide sufficient evidence to verify the claimed value of \$4,000.00.

Accordingly, I deny the tenant's claim for \$4,000.00 and only grant a nominal amount of \$400.00 in compensation for the lost items. I hereby issue a monetary order in favour of the tenant in the amount of \$400.00. This order must be served on the landlord and may be enforced through Small Claims Court if necessary.

Conclusion

The tenant is partially successful in the application and is granted a monetary order.

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: October 6, 2014

Residential Tenancy Branch