



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, RP, PSF, RPP, LRE, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; for an order that the landlord return the tenant's personal property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on November 3, 2014, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the tenant. The tenant testified that the landlord was served on that date and in that manner and has provided a copy of the Registered Mail receipt and a receipt from Canada Post bearing that date and a tracking number, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant testified that the tenant moved out of the rental unit at the end of November, 2014, having collected the final belongings of the tenant from the rental unit on December 2, 2014. Therefore, the tenant's applications

for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; and for an order suspending or setting conditions on the landlord's right to enter the rental unit are dismissed.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that the landlord should be ordered to return the tenant's personal property?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages and the cost of items belonging to the tenant that were removed from the rental property by the landlord?

Background and Evidence

The tenant testified that this month-to-month tenancy began on March 1, 2014 and the tenant moved out of the rental unit between November 29 and December 2, 2014. Rent in the amount of \$425.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$125.00 which is still held in trust by the landlord.

The tenant also testified that the rental unit is a house with a separate basement suite and the tenant lived in the upper unit with 3 other roommates. Each rented a room separately and shared a kitchen. Each roommate paid a different amount of rent, and the upper unit did not have a living room so the tenants used the laundry room and living room in the lower level, partially for storage. The landlord does not live there. Other tenants lived in basement but the landlord kicked them out.

The tenant further testified that the landlord gave the tenants one day of notice demanding that the tenants clean out the basement unit or the landlord would lock the doors, and the only other storage was the back porch. The tenant organized all of the belongings on that porch. The tenant went to Vancouver for work for a couple of weeks in mid-September, and upon returning found it all gone. The landlord was at the rental

unit and wouldn't talk to the tenant, but later admitted to taking it and said it was garbage. The tenant is missing a couple hundred dollars worth of art supplies, such as paint, media gear, sketch books, stylus, canvases and embroidery. Also missing is antique jewellery, such as a couple of pendants and chains, a cameo, ivory pieces with gold lace and eastern European jewelry from the tenant's mother, 6 or 7 sets of earrings, 3 or 4 big bracelets all in a zip-lock bag, and winter gear. About 15 boxes have been removed, 8 of which belonged to the tenant. The boxes certainly weren't abandoned and the tenant was only gone 10 days to 2 weeks. The tenant estimates the worth of the items to be \$1,000.00. The mixed media work includes 20 brass clasps and copper wiring and cost about \$30.00 each. The canvasses are worth about \$40.00 each. The shoes were in another box which also included winter boots, and the outdoor gear missing includes snowboard boots and 2 or 3 winter jackets. Some items still had price tags on them. The tenant was devastated and told the landlord to return the items but at first the landlord said he donated them to a thrift store, then later told the tenant that he had the right to throw them out.

The tenant also testified that over the course of a couple of years, the landlord stole other items from the front porch and lawn, such as couches, a barbeque, tables, outdoor gear and mountain bikes.

The tenant also claims aggravated damages for harassment and testified that the tenant tried to communicate with the landlord and made it clear to the landlord that all tenants were working toward the same goal. There is no damage to the rental unit, but the landlord called the tenant names such as filthy, a little girl, irresponsible, incapable, and that the tenants were not human beings. The landlord was condescending and insulting. The landlord also called the tenant's roommate a slut about 2 months before the landlord issued the notice to end tenancy. The tenant got in his face but didn't touch him, only yelled at him, and the landlord pressed his face to the tenant's and spat in the tenant's face while yelling.

The tenant claims \$1,000.00 as against the landlord and an order that the landlord return the tenant's personal property.

Analysis

Firstly, with respect to the tenant's application for an order that the landlord return the tenant's personal property, I am satisfied that the landlord has taken the items unlawfully, but I am not satisfied that they or any of them are in the possession of them. Some of the items appear to have some sentimental value to the tenant, and I find that

the landlord should be ordered to return whatever remains in the landlord's possession, and I so order.

With respect to the tenant's monetary claim, I am satisfied n the evidence that the landlord has breached the *Residential Tenancy Act* by attending on the rental property. I am also satisfied that the landlord has removed items he was not entitled to remove. In the circumstances, I find that the tenant's claim for \$1,000.00 is justified, and I so order.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenant's applications for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; and for an order suspending or setting conditions on the landlord's right to enter the rental unit are dismissed.

I hereby order the landlord to return the tenant's personal property.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,050.00.

These orders are final and binding and may be enforced.

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: December 17, 2014

Residential Tenancy Branch

