Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

In the first application the tenant seeks damages for the loss of two trunks and their contents, accidentally disposed of by the landlord.

In the second application the landlord seeks damages for cleaning of and repair to the premises following the end of the tenancy.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to the relief requested?

Background and Evidence

The rental unit is a “studio” apartment in a ten apartment building converted from an old residential school. The tenancy started in September 2003. The tenant vacated in September 2014. The rent during the last part of the tenancy was $510.00. The landlord holds a $200.00 security deposit paid August 15, 2003.

There is a crawlspace below the house. The tenant says there are eight or nine feet of headway init. The landlord says four feet. The photos indicate about five feet. The access to the area is gained through an exterior door with a lock on it. The area is not particularly assigned as a storage area, but it is not disputed but that from the start of the tenancy the tenant was given a key for door to the crawlspace and permitted to use the area for storage.

In July 2013, while disposing of the abandoned goods of another tenant, the landlord accidentally remove two items of the tenant’s, containing personal clothing and perhaps some recorded tapes. There is a dispute about whether the two items removed were

old soft sided suitcases or were hardboard steamer-type trunks with metal hinges and fasteners. The tenant was not fully sure what was in them. They may have been stored in the crawlspace for ten years. He speculates that each trunk held about twenty items of his clothing use in his former work in the computer industry. He says the landlord mentioned there were tapes in the containers and that sparked him memory to recall he had tapes there too, though he was not very specific about what was on the tapes but for "Christmas events" and "family things." He has not apparently replaced anything alleged to have been lost.

The landlord says the applicant and the outgoing tenant had their goods intermingled and is why they were mistaken. He says the outgoing tenant had authorized him to discard all his stored items as abandoned. The landlord says he went through the two suitcases looking for recyclable items or salvageable clothing for a goodwill shop but there was nothing of value in the cases. He took them and their contents to the dump.

The landlord says that the tenancy agreement requires the tenant to carry insurance (clause 14) and generally absolves the landlord of responsibility for the tenant's goods (clause 23).

The landlord says he and another worker spent four hours cleaning the rental unit included scraping the dirt off the floor. He claims $25.00 to repair a hot plate, $25.00 to clean blinds and $5.00 for blind cleaning supplies. He claims $25.00 for removing the fridge, claiming it was no longer serviceable because the tenant had kept shoes in it.

The tenant says he cleaned the premises and referred to a number of photos submitted. He never used the fridge. It was always unplugged and he used it to store his shoes because space was generally short in the suite.

Analysis

Clause 14 of the tenancy agreement required the tenant to insured his belongings. A requirement to carry insurance does not foreclose an action against the landlord if the landlord causes damage to the tenant's goods. Had the tenant insured the lost items and had the insurance company covered that loss and paid the tenant their value, the insurance company would have been subrogated to the tenant's claim against the person causing that loss and could have claimed against the landlord in the tenant's name for that loss. Clause 14 is not a defence open to the landlord.

Clause 23 provides:

> All luggage, vehicles, or other property of the tenant, stored on the residential property, shall be kept in safe condition in proper storage areas and shall be at the tenant's risk for loss, theft or damage from any cause whatsoever.

It was not argued that this clause was somehow in violation of the *Residential Tenancy Act* (the "*Act*") provisions nullifying any term in a tenancy agreement that contradicts or varies the mandatory, statutory terms of tenancies in British Columbia.

I find that the tenant's good were being stored "in a proper storage area" and that this clause provides the landlord with a complete defence to the tenant's claim for loss, even though the loss was caused by the conduct of the landlord.

The tenant's claim for damages for loss of his personal possessions must be dismissed.

I find that the landlord had to clean or repair the hot plate that came with the rental unit and had to make special effort to clean the blinds. I consider is claims for $25.00 and $30.00 for these items to be reasonable and I award him $55.00.

The landlord's evidence does not show that the fridge was broken or not useable. The mere fact that the tenant kept his shoes there with the unit unplugged does not serve as a reason to discard the appliance. I dismiss the landlord's claim for haulage charges to dispose of it.

I accept that the landlord and his helper spent four hours cleaning the rental unit and expended approximately $33.00 for cleaning supplies. I accept that considerable work was done cleaning the floors. At the same time, this tenancy was over ten years old during which time no apparent improvements were made to the floors. It also appears that the carpet like flooring needed to be lifted after the tenant left, through no fault of the tenant.

A tenant's obligations regarding cleaning and repair at the end of the tenancy are enshrined in s. 37 (2) (a) of the *Act*:

> (2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

It is not unusual for a landlord to want to see that a rental unit is cleaned to a level beyond that of "reasonably clean" at the end of a tenancy, if only to put the premises at

their best for showings to prospective tenants. A vacating tenant is not responsible for this extra cleaning.

Having regard to the evidence of the parties and to the photographic evidence presented regarding the state of the premises after move-out, an award for cleaning is warranted but not in the amount the landlord seeks. In all the circumstances, I award the landlord the amount of $102.08 for general cleaning, including supplies.

Conclusion

In result, the landlord is entitled to a monetary award of $157.08 plus recovery of the $50.00 filing fee for a total award of $207.08. I authorize the landlord to retain the $200.00 security deposit and accrued interest of $7.08 in complete satisfaction of the award.

The tenant's application 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: December 02, 2014

Residential Tenancy Branch