



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Commercial Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; his advocate; his Social Worker and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for losses of personal possessions, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on February 1, 2011 as a month to month tenancy for a monthly rent, at the end of the tenancy, of \$450.00 due on the first of each month with a security deposit of \$200.00 paid. The tenancy ended in January 2014.

The tenant's advocate submitted the tenant's health deteriorated in December 2013 and as a result was required to move into a care facility. The advocate submitted the landlord was informed and that the tenancy would end by the end of January 2014.

The tenant's advocate submitted that sometime between January 21 and January 23, 2014 two Social Workers spoke to the landlord's agent and were informed that the landlord had disposed of the tenant's belongings.

The tenants seeks compensation for a number of number of items including: a rosewood hutch (\$4,000.00); a stereo (\$1,000.00); queen bed (\$25.00); dresser (\$15.00); 3 TV's (\$30.00); dining table with 4 chairs (\$50.00); dishes, pots, pans, plates, cups and silverware (\$30.00); clothes & big winter coat, fleece coat (\$200.00); linens and pillows (\$10.00); CPAP machine (\$300.00); picture frames with pictures (\$30.00); eye glasses (\$200.00); stained window glass (\$70.00); and encyclopedia (\$10.00).

The advocate the value of items was determined by checking used and for sale sites on the internet for used items. She also stated that the value of the rosewood hutch was a price for a new hutch.

The landlord's agent testified that when the tenant was hospitalized he was contacted by a Social Worker who indicated that someone would collect some of the tenant's personal affects but that because he was moving into a facility he would not need furnishings and other larger items.

The landlord's agent also testified that he had contact with the tenant's sister who indicated that there was not to keep the items. The agent submitted that the tenant's sister felt the value of the possessions was less than \$500.00.

The agent also stated that he did have an estimate provided and the only item of any value identified was the dining table and chairs at \$60.00. The landlord stated that he would more than happy to provide the tenant with \$60.00 for the table and chairs.

The agent testified that he had dispose of the items on February 28, 2014 but that he still had the stain glass and he would be able to return that to the tenant.

The tenant's advocate testified that she had received a copy of a receipt from the landlord dated January 24, 2014 for dumping fees. The landlord testified that was an error on the part of the service provider and that that receipt was for other work completed by the landlord. The landlord's agent testified that he had another receipt for this work dated February 28, 2014.

Analysis

The be successful in a claim for loss or damages resulting from a violation of the Act, regulation or tenancy agreement the party making the claim has the burden of providing sufficient evidence to establish:

1. That damage or loss exists;
2. That the damage or loss has resulted from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any to mitigate the damage or loss.

When both parties to a dispute provide equally plausible versions of events the party with the burden of proof must provide additional evidence to corroborate their claim. In the case before me, I find the landlord disputes the value of the list of items and when the landlord disposed of the tenant's possessions. I also note that while the tenant has provided an explanation for how values were determined he has provided no documentation to confirm specific values. The tenant has also not provided any evidence such as direct testimony from the Social Workers involved confirming the landlord had disposed of the tenant's possessions in January 2014.

As such, in the absence of any corroborating evidence I find the tenant has failed to establish that the value of the possessions left behind by the tenant or when the landlord disposed of his possessions.

Section 24(1)(a) of the Residential Tenancy Regulation stipulates that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement. Section 24(2) goes to state that the landlord is allowed to consider personal property abandoned if the landlord receives an express oral or written notice of the tenant's not to return to the residential property.

In such a case Section 25(1) of the Regulation outlines that a landlord must store the personal property in a safe place for a period of not less than 60 days; keep a written inventory of the property; keep particulars of the disposition of the property for 2 years following the date of disposition and advise the tenant of the storage or disposal of the property.

Section 25(2) states that despite the obligations under Section 25(1) the landlord may dispose of the property if the landlord believes the market value of the property is less than \$500.00.

In the case before me and based on the testimony of both parties I find that the tenancy agreement would have ended effective January 31, 2014 and as such the landlord was entitled to consider the tenant's possession abandoned by that date.

Despite the tenant's assertion that the Social Workers were informed between January 21 and January 23 2014 that his possessions had been disposed of already and the value of his possessions and because the landlord submitted that he did not dispose the belongings until February 28, 2015 and that he disputes the value of the possessions submitted by the tenant I find, to be successful, the tenant would have had to provide additional evidence to corroborate this series of events and value.

As the tenant has not be provided any evidence to corroborate these submissions I find the tenant has failed to establish that the landlord failed to follow the requirements under the *Act* and Regulation in relation to the treatment of abandoned personal property.

While I accept the tenant has suffered a loss, I find the tenant has failed to establish the loss resulted from a violation of the *Act*, regulation or tenancy agreement on the part of the landlord or the value of that loss.

I note, however, that the landlord has acknowledged that he has, still in his possession, the stain glass window and as such I order that the landlord return this item to the tenant as soon as possible.

Further, as the landlord has acknowledged that he had an estimate of the value of the dining table and chairs for the amount of \$60.00 and he has not provided any evidence to establish that he incurred any costs for storage or removal of the tenant's personal possessions I order the landlord is obligated to provide payment of this amount to the tenant.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$60.00** as noted above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: April 17, 2015

Residential Tenancy Branch

