



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMPERIAL APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC

Introduction

This hearing was convened in response to an application by the tenant for a monetary order in lieu of personal property disposed of by the landlord. At the outset of the hearing the tenant testified their monetary claim was in respect to compensation for loss of personal items they referred as memorabilia.

Both parties participated in the hearing with their submissions and testimony during the hearing. Prior to concluding the hearing both parties in attendance acknowledged they had presented all of the relevant evidence that they wished to present. The landlord acknowledged receiving the application of the tenant, however, the landlord did not receive 4 pages of evidence and the tenant could not provide proof of service for the 4 pages upon which they wanted to rely. As a result, the respective 4 pages of evidence were deemed inadmissible. Regardless, the tenant testified they wanted to proceed on their application. The hearing proceeded on the merits of the testimonial evidence of the parties.

Issue(s) to be Decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy began September 01, 2013 and ended August 01, 2014 when the tenant vacated, but in the process did not remove all of their belongings. The local Police

became involved and the landlord was advised to store the tenant's items consisting of some furniture and personal effects; and, the tenant was advised to obtain a truck to remove their furniture and other effects from the landlord's storage. The landlord testified they moved all of the tenant's belongings into their storage room on the residential property. The landlord agreed to the above plan and the tenant testified they knew their belongings were with the landlord. The landlord testified the tenant's belongings consisted of the tenant's bedroom items, such as a bed, a dresser and a suitcase of personal items – or memorabilia. The landlord testified that they could see there were some "items of value" to the tenant and that some items were of a personal nature. The tenant testified the landlord held items which were very personal to them such as childhood photographs, personal achievement items, gifts and keepsakes as well as a birth certificate and other personal documents – the loss of which has caused them "anguish" and distress. The landlord testified they kept the tenant's items for, "2 or 3 months", during which period they encountered the tenant in the community. The landlord testified they did not create or keep a written inventory of the tenant's property, nor ultimately advised the tenant of its disposition. However, ultimately they tasked an associate to dispose of the tenant's items through recycling, and the Salvation Army. The tenant testified they did not make enquiry about their personal property or took steps to retrieve their belongings before the landlord disposed of them.

Analysis

It must be known that the tenant, as applicant, bears the burden of proving their monetary claim on balance of probabilities, and in this matter the landlord also bears the burden of proving they dealt with the tenant's personal belongings in accordance with the Act and Regulation. On preponderance of the evidence before me, I find that **Part 5** of the Residential Tenancy Regulation - Sections 24 through 30 - deals with **Abandonment of Personal Property**. I accept the evidence presented that the landlord had cause to consider the tenant's belongings as abandoned and in doing so was required to comply with all portions of Section 25, 27 and 29 of the Regulation, and moreover in accordance with **Section 30 – Landlord's duty of care**. I am not satisfied

with the landlord's testimony they did not know in more precise terms how long they kept the tenant's belongings, nor kept a written inventory of the belongings in accordance with Section 25 of the Regulation; and, that on determination some of the belongings were of a personal nature and of value to the tenant the landlord arranged for their disposal without notifying the tenant.

Section 7 of the Act provides as follows in respect to the tenant's claim for compensation:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) 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.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an 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 reasonable steps to minimize the loss or damage.*

On the testimony evidence of the parties and on balance of probabilities I find the landlord held the tenant's memorabilia and the tenant knew this, however the tenant did not take sufficient steps to retrieve it despite their claim these belongings were important to them. None the less, I find the landlord did not deal with the tenant's property in accordance with Section 25(1) of the Regulation. I am not satisfied by the ambiguity of the landlord's testimony in respect to how long they kept the tenant's items before disposal. I am not convinced they held the tenant's property for the required time

stipulated by Section 25(1)(a) of the Regulation. I am also not satisfied the landlord kept a written inventory of the property as required by Section 25(1)(b) of the Regulation. Moreover, I find the landlord was aware of the sensitive nature of the tenant's personal property and that it was of personal value to the tenant and in that determination the landlord had a duty of care as prescribed by Section 30 of the Regulation to exercise due caution and reasonable care so as the tenant's memorabilia was not compromised.

No Arbitrator can Order the return of the tenant's personal items such as memorabilia if they are not available, nor are replaceable. In this matter I find the tenant is at least owed compensation to enable them to replace personal documentation lost through the actions of the landlord in contravention of the Regulation, which I set at \$75.00. I further award the tenant compensation for intangible or *non-pecuniary losses*, representing the tenant's anguish over the loss of their memorabilia, in the set amount of \$250.00, for a total award of **\$325.00**.

Conclusion

I grant the tenant an Order under Section 67 of the Act for the amount of **\$325.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: June 23, 2015

Residential Tenancy Branch

