



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and for an Order for the landlord to return the tenant's personal property.

The tenant and landlord' agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and the landlord's witness on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to return personal property?

Background and Evidence

The parties were unsure when the tenancy started and no written tenancy agreement was in place. The landlord thought the tenancy had started on January 05, 2015 the tenant thought the tenancy started in November, 2014. The parties did agree that the rent for this unit was \$600.00 per month due on the 1st of each month.

The tenant testified that the landlord had served the tenant with a One Month Notice to End Tenancy for Cause. It was dated February 01, 2015 and the tenant received it on or about February 07, 2015. The tenant testified that he had already informed the landlord that he was vacating the rental unit at the end of January, 2015 and had paid his rent up to January 31, 2015. The tenant testified that he actually moved out on January 25, 2015; however, his belongings remained in the unit. Around February 14, 2015 the tenant returned to the unit to collect the rest of his belongings and his cat. The landlord had removed the tenant's belongings from the unit and left them outside in the yard and the tenant's cat was in the landlord's unit upstairs.

The tenant testified that the landlord told him that his belongings were removed from the unit on February 07, 2015 and left on the driveway. As these belongings were in the landlord's way the landlord then had them moved to the end of the driveway near the road. When items started to go missing the landlord then had the tenant's belongings moved closer to the house.

The tenant testified that he had a Samsung TV set, which was Blu-ray compatible. This TV was five years old and was stolen from the tenant's belongings. The tenant testified that he found a similar one in on the Best Buy site for \$1,099.99 however; this one did not have the Blu-ray capability. The tenant did further investigation and found one the same year old on EBay for \$1,487.84. The tenant has provided documentary evidence printed from the Best Buy site but no evidence showing the comparable TV from EBay.

The tenant testified that there was also a Samsung Blu-ray player stolen with a three D function. This was also five years old. The tenant has provided documentary evidence from Best Buy showing a comparable player for \$109.99 but testified he found another

one on EBay for \$86.87. The tenant has not provided documentary evidence showing the comparable player on EBay.

The tenant testified that he also had a surround sound system stolen. The tenant testified he paid \$300.00 for that system four years ago but has no documentary evidence showing the replacement costs of a comparable system.

The tenant testified he had a gun safe. When the landlord removed this from the tenant's unit and left it outside, someone tried to jimmy the lock which caused damage to the lock. The gun safe was found in the landlord's barn but the tenant's keys would no longer open it due to the damage to the lock. The tenant seeks to recover the cost for the lock of \$169.99.

The tenant testified that when he went to the unit to collect his belongings his aluminum boat was also missing. The tenant called the police and the police recovered the boat from the landlord's yard. The tenant has provided a police file number in documentary evidence.

The landlord testified that after the tenant left the unit he left all his belongings in the unit. The landlord testified that she did not remove the tenant's belongings until April 01, 2015 on the advice of her social worker and someone from her church. The tenant had said he was not going to pay rent on February 28 and the police were called. The landlord testified that they had stored the tenant's belongings in the unit for sixty days and on April 01, 2015 the belongings left in the unit were removed outside.

The landlord testified that she does not know the date the police came out but when they came, the tenant's belongings were all still in the unit. The landlord testified that someone advised the landlord to put the gun safe outside as it was dangerous. It was later put in the barn after someone tried to tamper with it. The landlord agreed that they put the tenant's TV, Blu-ray player and surround system outside with the rest of the tenant's belongings and the tenant was supposed to come and get them.

The landlord testified that one night they could hear the dog barking outside and thought someone could be out there tampering with the gun safe. The gun safe was then placed behind a car and later put in the barn. The landlord testified that everything else was outside and covered up so the landlord does not know where everything went.

The tenant disputed the landlord's testimony. The tenant testified that the police came to the residence on February 14, 2015 and the tenant's belongings were outside at that time. The tenant testified that the landlord has contradicted herself concerning the dates and the location the gun safe was placed in.

The landlord calls her witness DE. The witness testified that he was present when the tenant moved out but is not good at remembering dates. DE testified that he thinks the tenant moved into the unit on January 15, 2015 and moved out a couple of months later. DE testified that they put the gun cabinet outside and when they heard the dog barking they knew some kids were outside trying to tamper with the gun safe. As the landlord did not know if the gun safe had guns in it they decided they should put it in the barn. DE testified that he thinks this happened around April 09 or 10, 2015.

DE testified that the tenant's boat was put out of sight to prevent anyone coming to steal it around the end of March although that date is not clear. DE testified that he had picked up a TV set and put it outside but does not remember anything about a Blu-ray player or anything else.

The tenant asked DE where he first moved the gun safe. DE responded that he first moved it to the driveway but after hearing noises it was moved to the barn

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Giving consideration to the above test I have turned my mind to the tenant's testimony and documentary evidence and the testimony of the landlord and her witness. The landlord agreed that they did remove the tenants TV, Blu-ray player, surround sound system and the gun safe from the unit. The dates when these items were removed is open to interpretation as I have no corroborating evidence before me from either party to confirm the conflicting dates given in testimony.

I refer the parties to the Residential Tenancy Regulations part five which deals with the abandonment of personal property.

24 (1) A landlord may 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

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

The tenant stated that he left the unit on January 25, 2015 and informed the landlord his tenancy will be ending on January 31, 2015. The landlord testified that the tenant did not end the tenancy but did not pay any further rent after January, 2015. I have considered both parties arguments concerning when the tenancy ended. Neither party have provided any corroborating evidence as to when the tenancy ended or when the police were called to the unit.; however, the burden of proof lies with the tenant and when one person's testimony contradicts that of the other then it is one person's word against that of the other and the burden of proof has not been met.

Due to this I am unable to determine when the tenant ended the tenancy or when his belongings were placed outside. The matter of the tenant's belongings going missing and being damaged; however, can be dealt with.

I refer the parties to s. 25 of the regulations concerning the landlord's obligation to stored property

25 (1) The landlord must

- (a) 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,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

I am satisfied from the evidence presented that the tenant's belongings had a market value of more than \$500.00; that the cost of removing, storing and selling the property

would be less than the proceeds of its sale; and that the storage of the property would not be unsanitary or unsafe.

Further to this the landlord has a duty of care when dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

I find the landlord has not exercised a duty of care towards the tenant's belongings. Instead the landlord agreed that the tenant's belongings were put out on the driveway which potential made these belongings a target to be stolen or damaged. The landlord and her witness admit that the gun safe was tampered with and that although they do not know where the tenants other items went; had the landlord exercised a duty of care and kept the tenant's belongings locked away in a safe manner they could not have gone missing.

I am satisfied that the tenant's belongings were removed and damaged by persons unknown. I therefore find the tenant has met the burden of proof that this loss occurred through the landlord's actions of leaving the tenant's property in an unsafe location while being stored by the landlord.

The test requires the tenant to provide evidence of the actual cost to replace the missing items and to have the lock repaired on the gun safe. The tenant has provided some comparables for the TV set and the Blu-ray player but no evidence to show the cost of the surround sound system or the lock replacement for the gun safe. I further find as the TV, Blu-ray and surround sound system were four and five years old that there is some depreciation of these items. The tenant has provided some evidence for the replacement cost of the TV at \$1,099.99 although this comparable did not have all the components the tenant testified was in his TV I have made some adjustments for depreciation. I have made some further adjustments to the tenant's claim as the tenant could have minimized this loss by removing all his belongings from the unit at the end of

the tenancy. Consequently, without further evidence showing a more comparable TV set I have awarded the tenant a nominal amount of **\$650.00**.

With regard to the Blu-ray player; the evidence shows a Blu-ray player at \$109.99 and the tenant testified he found a similar one for \$86.87. Again some depreciation and obligation to minimize the loss must be deducted and I award the tenant the sum of **\$65.00**.

With regard to the surround sound system; the tenant has provided no evidence as to the replacement costs for this system. The tenant testified he paid \$300.00 four years ago but without proof to show the amount it would cost to replace this item I must award the tenant a nominal amount of **\$150.00**.

With regard to the damaged lock on the gun safe; the tenant has provide insufficient evidence to show the actual amount paid to have the lock repaired or replaced. While the landlord agreed this was damaged when they put the gun safe outside I find the tenant has not met the burden of proof as to the actual cost to replace or repair the lock and therefore I have awarded the tenant a nominal amount of **\$100.00**.

The tenant has requested an Order for the landlord to return the tenant's personal belongings. As the landlord agreed that these items have gone missing I have awarded the tenant some costs towards the replacement of these items. I am not therefore prepared to give an Order for the landlord to return the tenant's personal belongings if the landlord no longer has them in her possession. I do; however, caution the landlord that any other items belonging to the tenant still held by the landlord must be dealt with under part five of the Regulations sections 25, 26, 27 and 29 or otherwise returned to the tenant.

Conclusion

I issue a Monetary Order in the tenant's favor in the amount of \$965 pursuant to s. 67 of the Act:

Item	Amount
TV	\$650.00
Blu-ray	\$65.00
Surround sound system	\$150.00
Lock for gun safe	\$100.00
Total Monetary Order	\$965.00

The tenant is provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: July 21, 2015

Residential Tenancy Branch

