



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, RPP, FF

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; for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement; for an Order for the landlord to return the tenant's personal property; and to recover the filing fee from the landlord for the cost of this application. At the outset of the hearing the tenant withdrew her application for an Order for the landlord to provide services or facilities required by law.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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.

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 comply with the *Act*, regulations or tenancy agreement?

- Is the tenant entitled to an Order for the landlord to return the tenant's personal property?

Background and Evidence

The parties agreed that the tenant sublet a bedroom and den in this unit from the landlord who is the tenant of the owners of the unit. The tenant agreed to pay a monthly rent of \$850.00 on the last day of each month in advance. This was later reduced to \$800.00 until the tenant finishes her exams. The tenant paid a security deposit of \$425.00 just prior to the start of the tenancy.

The tenant testified that she and the landlord entered into a personal relationship. They had argued sometime in April, 2015 and the landlord went shopping with the tenant and purchased a pair of pink designer shoes and two dresses to apologise for the argument. The tenant had tried the shoes and dresses on and the landlord purchased them and then gave them as a gift to the tenant. The tenant testified that she had not yet worn the shoes or the dresses and they were in her room. The relationship between the parties ended. The tenant testified that the landlord entered her room sometime between June and July, 2015, without permission, and took the shoes and both dresses. The landlord then returned the shoes and one dress to the store and got his money back.

The tenant testified that she called the police and the police told the landlord he must return the tenant's property. As the landlord had already taken one dress and the shoes back to the store the landlord was only able to return one of the dresses to the tenant. The tenant seeks to recover the cost of the shoes of \$1,226.00 including tax and the cost of the dress of \$41.44 including tax.

The tenant seeks an Order to prevent the landlord entering the tenant's room without permission or proper notice. The tenant testified that the landlord's mother came to stay and she had also entered the tenant's room. The police were called again concerning

this and the landlord's mother was cautioned not to enter the tenant's room or she could be charged with breaking and entering. The tenant has provided detailed police reports for both incidents.

The tenant seeks an Order for the landlord to return the tenant's personal property.

The landlord disputed the tenant's claims. The landlord testified that he did enter into a relationship with the tenant after she moved in. the landlord disputed that he purchased the shoes and dresses for the tenant. The landlord disputed that he had entered the tenant's room without permission to take the clothes and the shoes and testified that these items were in the living room of the unit. The landlord agreed he had purchased the shoes and dresses but testified he purchased them for his best friend's wife who lives in China. The tenant knew the shoes were not for her. The landlord agreed he did return one of the dresses and the shoes to the store as he was not sure of his friend's wife's size and his plans to return to China were changed. The landlord testified that the tenant had shown the landlord a picture of a pair of shoes she wanted but the shoes that were purchased were different to this picture.

The landlord testified that after the tenant called the police his mother was visiting from China and as he did not want to upset his mother in front of the police he did give one of the dresses to the tenant. The landlord testified that he told the police the items did not belong to the tenant. The second time the police were called was because the tenant said the landlord's mother was speaking to the tenant in a way the tenant did not like. The landlord disputed that his mother ever entered the tenant's room.

The tenant questioned the landlord and asked if the landlord was there when the tenant tried on the pink shoes and did the landlord purchase them while he was with the tenant. The landlord responded that he did recall buying the pink shoes but bought them for his friend's wife in China and got the tenant to try them on as they are a similar size and the landlord wanted to see how they looked on. The tenant asked the landlord if he

wanted the tenant to try dresses on for his friend's wife in China too. The landlord responded that yes his friend's wife and the tenant are a similar size.

The tenant asked the landlord if he is buying gifts such as this at a great expense for his best friend's wife what did the landlord buy his best friend? The landlord responded that he has not bought his friend anything as his plans to go back to China changed. The tenant asked the landlord if they had been dating for some time and did he take the tenant to Vegas and did he buy her another pair of shoes there. The landlord responded that they were not dating then. The tenant testified that if they were not dating why did the landlord buy her shoes? The landlord responded that they were not for the tenant. The tenant asked the landlord to provide a name and address for his best friend's wife. The landlord responded with a name and a city in China.

The tenant testified that the landlord is lying. They went to the store together because the landlord wanted to buy the shoes and dresses for the tenant to apologize for arguing with the tenant. After he purchased the shoes and dress he handed them to the tenant as a gift and now he is saying they were for someone else.

The landlord asked the tenant why she is claiming \$1,300.00 on her application. The tenant responded that it is for the value of the shoes and dress that the landlord returned to the store. The landlord confirmed the price paid for the shoes and dress at \$1,226.00 and \$41.44.

Analysis

With regard to the tenant's claim for the cost of the shoes and dress; The tenant claimed the landlord purchased the shoes and dress for the tenant. The landlord claimed he purchased these items for his best friend's wife living in China. I find the landlord's evidence less than credible that he had the tenant try on two dresses and an expensive pair of shoes for a gift for his best friend's wife in China.

I find the tenant's evidence credible that these items were purchased for her by the landlord and that after their relationship ended the landlord removed these gifts and returned one dress and the shoes to the store. If a gift has been given to another person it becomes the property of that person and as such may not be removed or returned to the store by the other person. I am satisfied on a balance of probabilities that the landlord did purchase these items for the tenant in April, 2015 while they had a relationship. The landlord provided information as to the cost of these shoes and the dress; I therefore uphold the tenant's claim to recover the cost of these items to an amount of **\$1,226.00** for the shoes and **\$41.44** for the dress.

With regard to the tenant's claim for an Order for the landlord to comply with the Act with regard to entering the tenant's rooms; the landlord denies ever entering the tenant's room without permission and denies that his mother also entered the tenant's room. I have considered the comments made by the police officer who attended the unit on the second occasion; who through the landlord, spoke to the landlord's mother regarding entering the tenant's room. I am satisfied from the evidence presented that the landlord and his mother both entered the tenant's room on one or more occasions without permission or proper notice. Even if this is a shared unit between the landlord and tenant the tenant is entitled to reside in her bedroom and have use of the den without any other person entering without permission or proper notice. I therefore Order the landlord to ensure he complies with s. 29 of the Act which states:

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

With regard to the tenants application for the landlord to return the tenant's personal property; As the landlord no longer has the dress and shoes in his possession the tenant has been awarded a Monetary Order for the cost of these items and therefore no further Order can be made under this section of the tenant's claim.

As the tenant's claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I hereby issue a Monetary Order pursuant to s. 67 and 72(1) of the *Act* in the tenant's favor in the amount of \$1,317.44 under the following terms:

Item	Amount
Shoes	\$1,226.00
Dress	\$41.44

Recover Filing Fee	\$50.00
Total Monetary Order	\$1,317.44

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: September 11, 2015

Residential Tenancy Branch

