

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

<u>Introduction</u>

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on May 13, 2015. The Landlord filed seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on May 13, 2015.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Landlord, I find that the Tenant was served notice of this hearing in accordance with Section 89(1) (c) of the Act. I further find that the Tenant was deemed served with Notice of this hearing and with the Landlord's evidence on May 18, 2015, pursuant to section 90 *Act* and I proceeded in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was the Tenant entered into a fixed term written tenancy agreement that began on June 1, 2010 that switched to a month to month tenancy after May 31, 2011. Rent of \$965.00 was due on or before the first of each month as per the tenancy agreement. Rent was subsequently increased to \$1,040.00 per month. On May 5, 2010 the Tenant paid \$482.50 as the security deposit.

The Landlord testified that on April 15, 2015 the Tenant gave late notice to end her tenancy effective April 30, 2015. The Tenant signed a notice document acknowledging that they were aware the notice was late and they would be responsible for the unit until June 1, 2015 or until the unit is re-rented.

The Landlord submitted that she could see the Tenant moving her possessions out of the unit near the end of April 2015. The Landlord attempted to contact the Tenant to schedule the move out inspection and when the Tenant failed to answer her calls she left two messages.

The Tenant did not return the Landlords calls until after she had vacated the rental unit. The Landlord said she received a message from the Tenant which indicated the Tenant had moved out and left the keys in the Landlord's mailbox. The Landlord stated that not all of the keys were returned as the Tenant remained in possession of the building access key and the storage locker key. The Landlord submitted evidence that the Tenant left her possessions inside the storage locker.

Upon inspection of the rental unit the Landlord stated that they found that the Tenant failed to remove the glass show enclosure she had installed on the tub/shower. The Landlord asserted that the Tenant had asked permission to have it installed and was told that she would have to have it removed at the end of the tenancy, to which the Tenant agreed. The Landlord argued that the enclosure was installed too low for an average person to gain entry into the tub/shower without hitting their head so they had to pay to have it removed.

The Landlord filed their claim seeking \$1,315.00 which was comprised of \$1,040.00 for May 2015 unpaid rent; \$250.00 for labour and materials to remove the shower enclosure and repair the tiles; plus \$25.00 to replace the building key.

In support of their application the Landlord submitted documentary evidence which included, amongst other things, copies of: photographs of the rental unit; an email invoice for the removal of the shower enclosure dated May 13, 2015; the tenancy agreement; the form for late notice; the Tenant's notice to end tenancy; the move out inspection report form; the Canada Post receipts; and the Tenant's forwarding address dated May 13, 2015.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

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 their loss.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must return all keys and leave the rental unit reasonably clean and undamaged except for reasonable wear.

After careful consideration of the foregoing, the undisputed evidence, and on a balance of probabilities I find the Landlord submitted sufficient evidence to prove the Tenant ended her tenancy without proper notice as required by section 45(1) of the *Act.* I further find the Tenant failed to pay the May 2015 rent as required by section 26 of the *Act.* Accordingly, I grant the claim for unpaid rent of **\$1,040.00**.

I accept the undisputed evidence that the Tenant agreed that she would be required to remove the shower enclosure at the end of the tenancy. Therefore, I conclude that by failing to uphold that agreement the Tenant has caused the Landlord to suffer a loss as they had to remove the unit and conduct repairs. Accordingly, I grant the claim for repairs in the amount of **\$250.00**.

The Tenant failed to return all the keys at the end of the tenancy in breach of section 37 of the *Act*. That breach caused the Landlord to suffer a loss when replacing the building key. Therefore, I grant the claim for the building key replacement in the amount of **\$25.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid May 2015 Rent	\$1,040.00
Removal of the shower enclosure	250.00
Building Key replacement	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,365.00
LESS: Security Deposit \$482.50 + Interest 0.00	<u>-482.50</u>
Offset amount due to the Landlord	\$ 882.50

Part 5 of the Regulations provides for the handling of abandoned property. Part 5 has been copied to the end of this Decision.

Conclusion

The Landlord was successful with their application and was awarded \$1,365.00. That award was offset against the Tenant's security deposit leaving a balance owed to the Landlord of \$882.50.

The Landlord has been issued a Monetary Order in the amount of **\$882.50**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with Small Claims 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: October 28, 2015

Residential Tenancy Branch

Residential Tenancy Regulations Part 5 Abandonment of Personal Property

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.

Landlord's obligations

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).

Tenant's claim for abandoned property

- **26** (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [disposal of personal property], the landlord may, before returning the property, require the tenant to
 - (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing and storing the property, and
 - (ii) a search required to comply with section 27 [notice of disposition], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
 - (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

Notice of disposition

- **27** (1) For the purposes of this section:
 - "financing statement" has the same meaning as in the Personal Property Security Act;
 - "security interest" has the same meaning as in the Personal Property Security Act;
 - "serial number" has the same meaning as in section 10 of the Personal Property Security Regulation [collateral described by serial number] made under the Personal Property Security Act.

(2) Not less than 30 days before disposing of an item of personal property referred to in section 24, the landlord must

- (a) give notice of disposition to any person who
 - (i) has registered a financing statement in the Personal Property Registry using the name of the tenant or the serial number of the property, and
 - (ii) to the knowledge of the landlord, claims an interest in the property, and
- (b) publish the notice in a newspaper published in the area in which the residential property is situated.
- (3) The notice referred to in subsection (2) must contain
 - (a) the name of the tenant,
 - (b) a description of the property to be sold,
 - (c) the address of the residential property,
 - (d) the name and address of the landlord, and
 - (e) a statement that the landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.
- (4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act[service of statements, notices and demands]*.

Holder of a security interest

- **28** (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.
 - (2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

Disposal of personal property

- **29** (1) For the purposes of this section, "administrator" has the same meaning as in the *Unclaimed Property Act*.
 - (2) If a landlord has complied with section 25 [landlord's obligations], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,

(a) a person referred to in section 27 (2) [person entitled to notice of disposition] who has been given a notice as provided in that section has taken or demanded possession of the property,

- (b) a person who holds a security interest in the property has taken or demanded possession of the property, or
- (c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.
- (3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to
 - (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing, storing, advertising and disposing of the property, and
 - (ii) a search required to comply with section 27 [notice of disposition], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.
- (5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.
- (6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.
- (7) On the application of an interested person, a court may make an order
 - (a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,
 - (b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or
 - (c) that an action be brought or an issue be tried.

[am. B.C. Reg. 234/2006, s. 19.]

Landlord's duty of care

30 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.

Repealed

31 Repealed. [B.C. Reg. 234/2006, s. 20.]