



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

These hearings took place in response to an Application for Dispute Resolution (the "Application") made by the Tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Landlord and the Tenant appeared for the first hearing. The Landlord confirmed receipt of the Tenant's Application and documentary evidence. However, the first hearing was adjourned to allow the Landlord to submit rebuttal evidence to the Tenant and the Residential Tenancy Branch. The full reasons for the adjournment were documented in my Interim Decision dated October 21, 2015.

The Tenant appeared for this reconvened hearing and called a witness during the hearing; both participants provided affirmed testimony. However, there was no appearance for the Landlord during the 36 minute duration of the hearing. The Tenant confirmed that she had not received any evidence from the Landlord prior to this reconvened hearing. In addition, there was no evidence before me from the Landlord for this file. As the first hearing had been adjourned to give the Landlord an opportunity to submit rebuttal evidence, I continued to hear the Tenant's Application and considered the undisputed evidence in my findings below.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord for her personal property?

Background and Evidence

The Tenant testified that this tenancy was due to start on June 1, 2014. However, she did not move into the rental unit until June 16, 2014. A written tenancy agreement was signed and rent was established in the amount of \$720.00 per month. This was payable

in two installments on the 1st and the 15th day of each month. The Tenant paid the Landlord a security and pet damage deposit of \$350.00 each.

The Tenant testified that after she began falling behind on her rent, the Landlord had given her an eviction notice to end the tenancy. The Tenant was unsure of exact date the tenancy ended but it was some time around February 2015. The Tenant testified that the Landlord asked her whether she needed to store her personal belongings from the rental unit in a storage cage located in the Landlord's car port until she got back on her feet.

The Tenant, not having any money to store her belongings, agreed to the Landlord's offer and neatly packed and labelled all her belongings into boxes and stored them in the Landlord's storage container. The Tenant called a witness into the hearing who testified that he helped the Tenant store her belongings in the Landlord's storage container. The Tenant testified that the Landlord offered her unlimited storage and asked her to inform him when she was ready to collect her property. The Tenant explained that the storage container was larger and had a caged front so you could see the property held inside.

The Tenant testified that she moved into another residential building several doors down from the rental property and she often saw the Landlord on a daily basis. The Tenant testified that the Landlord knew where the Tenant lived.

However, approximately one and half months later a friend of the Tenant informed her that she had seen an open box belonging to the Tenant in the middle of the road with the Tenant's pictures strewn in the road and cars driving over them.

The Tenant immediately went to see the Landlord about this who stated that this was not true. The Tenant asked the Landlord whether she could see her property in his storage container and the Landlord told her to come back later as he was busy. When the Tenant returned to the Landlord's house, the Landlord would not open the door. The Tenant testified that a friend in the rental building let her in to the car parking area so she could see the storage locker. She then observed that all her property was gone.

The Tenant testified that she tried to ask the Landlord about her personal property but the Landlord shone a light in her face from his place and told her to leave. The Tenant called the police who attended the location. The Tenant testified that when the police asked the Landlord about the Tenant's personal property, the Landlord told the police officer that he had taken all her personal property and dumped it throughout second hand stores in the area.

The Tenant now claims for the loss of her personal property. The Tenant provided an extensive list of missing property with estimated respective values. These items included, but were not limited to: personal photographs, furniture, clothing, bedding, electronics, jewelry, family air looms, paintings, bathroom products and home furnishings. The Tenant and her witness testified that the personal property was all in good condition and this was the reason why it was carefully wrapped up and placed into boxes while it was going to remain in storage.

The Tenant testified that there were at least 25 boxes of her items stored in the Landlord's storage container. The Tenant testified that the total value of her property was in excess of \$40,000.00 but that she had only claimed \$10,000.00 because she was informed by the Residential Tenancy Branch that she had to put an amount on her Application. The Tenant testified that the amount she had claimed was far less than the physical and sentimental loss of her personal property and that the family pictures and air looms she had lost cannot be assigned a value as they are irreplaceable.

Analysis

In making a decision on the Tenant's Application for \$10,000.00, I take into consideration that the Landlord appeared for the first hearing and that hearing had been adjourned to allow the Landlord to submit rebuttal evidence. However, the Landlord failed to provide any evidence or appear for this hearing. Therefore, I am only able to make findings on the basis of the Tenant's undisputed evidence before me as follows.

I accept the Tenant's evidence along with the witness testimony that at the end of this tenancy, the Tenant stored her personal property which comprised of all her belongings from the rental unit, in the Landlord's storage locker. I find the Landlord retained control of the Tenant's personal property after this point and I accept the Tenant's undisputed evidence that the Landlord disposed of the Tenant's personal property as testified to by the Tenant.

Part 5 of the Residential Tenancy Regulation on the abandonment of personal property speaks to a landlord's obligations when dealing with a tenant's personal property. In relation to these regulations, I find there is no evidence before me that the Landlord made efforts to contact the Tenant or inform her that he was going to dispose of her personal property. I also find that there is no evidence before me that the Tenant had been given an opportunity to retrieve her property as she was of the understanding that there was no time limit imposed on the offer of storage extended by the Landlord. In addition, there is no evidence before me that the Landlord dealt with the Tenant's personal property in the manner outlined in the regulations.

Policy Guideline 16 to the Act titled "Claims in Damages" states in part:

"An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right..."

If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- *the amount of disruption suffered by the tenant.*
- *the reason for the disruption.*
- *if there was any benefit to the tenant for the disruption.*
- *whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.*

If a claim is made by a tenant for damages for breach of the abandonment regulations by the landlord the normal measure of damages is the market value of the lost articles, i.e. the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant."

[Reproduced as written]

In relation to the Tenant's claim amount of \$10,000.00, I take into consideration that the Tenant provided an extensive list of the property which was stored within the Landlord's storage container. I accept the undisputed evidence that the personal property was in good condition and that the loss of this amount of property caused the Tenant significant loss and disruption as it involved the entire contents of the rental unit.

I accept that some of the items listed by the Tenant such as photographs and family air looms cannot be replaced and that this continues to cause the Tenant significant suffering. I am also unsure of why the Landlord took this course of action in dealing with the Tenant's personal property.

Although the Tenant did not assign a value to some of the items she listed, I accept the Tenant's undisputed evidence that the value of the property disposed of by the Landlord exceeded the \$10,000.00 claimed as it related to the entire contents of the rental unit. Therefore, I award this amount to the Tenant accordingly. The Tenant is issued with a

Monetary Order for this amount which must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The Landlord has breached the Act by disposing of the Tenant's personal property. Therefore, the Tenant's monetary claim for \$10,000.00 is granted.

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: December 21, 2015

Residential Tenancy Branch

