



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for return of all or part of the pet damage deposit or security deposit.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The landlord provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant, however the tenant has not provided any evidence. The parties were given the opportunity to question each other with respect to the testimony and evidence provided by the landlord, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenant withdrew the application for a monetary order for return of all or part of the pet damage deposit or security deposit.

The landlord's agent opposed the inclusion of the tenant's Amendment to an Application for Dispute Resolution and opposed an adjournment to consider the amendment. The tenant argued that the amendment was made because the tenant didn't realize when the original application was filed that other items were missing, and filed the amendment after receiving the landlord's evidentiary material, and seeks to increase the claim from \$12,500.00 to \$25,000.00. The tenant's original application was filed on August 27, 2015; the landlord's evidentiary material was received by the Residential Tenancy Branch on November 4, 2015 and the landlord's agent stated that the tenant was served at the same time; and the tenant's amended application was filed on November 26, 2015. The Rules of Procedure require an applicant to file an amendment at least 14 days prior to the hearing date. I found that the tenant had plenty of time to file the Amendment to an Application for Dispute Resolution after receiving the landlord's evidentiary material, and that the landlord would be prejudiced if such a late amendment

were to be made, and the amendment was not allowed. The hearing commenced with respect to the original Tenant's Application for Dispute Resolution.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

The issue remaining to be decided is:

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of replacing the tenant's belongings?

Background and Evidence

The tenant testified that this month-to-month tenancy began on February 4, 2005 and ended on August 5, 2015. Rent in the amount of \$775.00 per month was payable on the 1st day of each month, along with a \$10.00 per month parking fee, and there are no arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$387.50 which was returned to the tenant in addition to interest. A copy of the tenancy agreement has been provided by the landlord. The rental unit is a 2 bedroom apartment.

The tenant further testified that upon giving her notice to vacate the rental unit, the landlord's agent said, "You realize any stuff you leave behind, it will be stored and be very expensive." As far as the tenant knew that's what would happen. The tenant had been really sick and asleep a lot for all of 2015, when it came down to moving, it got to be too overwhelming. Most of the tenant's belongings would have been too heavy to have moved, and the tenant thought she would take what she could and leave the rest and pay the fee, which the landlord said would be about \$400.00. The landlord wouldn't give the tenant a storage locker, but would store it. When the tenant returned a week later to ask the landlord where it was stored so the tenant could pay the storage company and retrieve the items, the landlord's agent at the time slammed the door in the tenant's face and refused to give any information.

The tenant went back the following week, and thought she would ask another agent of the landlord, but the landlord's agent said she didn't know and that there was no storage at the complex. The tenant testified there were 14 empty storage lockers.

Toward the end of month the tenant asked landlord's agent at the time again and he pushed her and loudly yelled at the tenant saying that the tenant had lost it all and walked away. At no time did the tenant threaten or put hands on him, just asked a question. The tenant was crying and called the police, who arrived but just took notes.

The tenant lost a leather chair, boxes of clothing, emergency supplies which can't be replaced such as a vintage Coleman stove, parts to her bed, boxes of 2010 Olympic jackets, snow pants, vests, rain pants, hats, and gloves for 5 people, 2 paintings by an English and a Swiss artist, a rolling wardrobe rack, large solid vintage table, wooden cabinet from 1870, all sorts of plastic storage units, acoustic guitar, antique Victorian wood vanity box and contents, fishing tackle box with the tenant's mother's wedding and anniversary rings and those of the tenant's great aunt, the tenant's birth certificate and other certificates, the tenant's jewelry, the tenant's father's scrap book with hockey achievements, Vintage sewing machine, 3 jewelry stands, a box of summer clothes, vintage clothing, 4 small tables, a large tool box on wheels, shoes, vintage green jade mixing bowls, coffee makers, part of the tenant's stereo system, which were all left in the rental unit. The tenant thought the landlord would keep them for 30 days. He said he would phone someone to pick it up but didn't say whom.

The tenant also left 13 boxes in a storage locker at the rental complex but when she returned during the 2nd week of August, 2015, there were only 7 boxes. Six boxes of collectables were missing.

The tenant went back to the rental complex once per week during August to try to find her belongings. The last time was when the landlord's agent at the time pushed the tenant, and when the tenant left, a neighbour told the tenant that the landlord had another tenant take the tenant's belongings out of the rental unit. The tenant couldn't return and was too traumatized, so didn't see anyone take anything.

The landlord could not have re-rented the rental unit even if the tenant's belongings weren't left there because of the amount of repairs that were required.

The tenant has been very ill and could only stay awake for about an hour per day.

The tenant claims \$12,500.00 from the landlord.

The landlord's agent testified that during the tenancy there have been different resident managers, and the person the tenant accuses of pushing her no longer works for the landlord. If it did happen, the tenant made no complaint to the landlord company and did not make an application for dispute resolution.

The move-in and move-out condition inspection reports were completed and a copy has been provided. The tenant agreed in writing on the form to allowing the landlord to keep the \$387.50 security deposit for "Unit cleaning and disposal of left items." The present manager was there that day, and the tenant was putting things in the storage locker. The manager told the tenant that the items left behind would be disposed of, and the tenant signed another document, a copy of which has been provided. The document is signed by the tenant and dated August 5, 2015 and states that the tenant agrees that: "...all items left in my previous rental suite (address) at 3:30 pm Wednesday, August 5, 2015 are to be disposed of by (the landlord) using the funds held from my security deposit (\$387.50) as per my move-out inspection dated August 5, 2015."

The landlord's agent further testified that the landlord returned to the tenant the full security deposit and interest in any event because the agent felt sorry for the tenant.

With respect to the items left in the rental unit, the landlord's agent stated that if the tenant had abandoned the rental unit, the landlord would make an assessment as to the value of the items to decide what to retain, but there was no value to most of the items left in this rental unit. There were bags of broken items, and nothing of value left. Due to the tenant's history and the value she might place on the items, the landlord's agents wanted to be sure the tenant knew and was fully aware that it would be disposed of and signed on 2 occasions to that effect. Photographs have been provided, which the landlord's agent testified were taken during the move-out on August 5, 2015 depicting the condition of the rental unit, hallway and outside of the rental unit at the time the tenant signed the move-out condition inspection report.

The landlord agrees that items of value including a leather chair, broken table, tool box, tower of plastic storage boxes, and a metal clothing rack were left in unit, but none of the other items the tenant has claimed. The landlord still has those items and the tenant can have them but needs to attend at a pre-determined time so the landlord can have security present to keep the peace.

The landlord's agents did not remove any boxes from the storage locker. The storage locker is in a room containing individual storage lockers and tenants put their own locks on them. The landlord does not keep keys for tenants' storage lockers.

The landlord's agent submits that the tenant has provided no evidence that any other items of value were left in the rental unit and seeks to have the tenant's application dismissed.

Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to satisfy the 4 part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the tenant has provided absolutely no evidence that any such items of any value exist. The landlord has provided photographs of items which were taken during the tenant's move, however, I am not able to determine which if any of them remained in the rental unit or their value.

The regulations to the *Residential Tenancy Act* state that:

- 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.

In this case, the tenant left personal items in the rental unit after the tenancy had ended, however I have no evidence before me with respect to the date the items left behind were removed by the landlord. I am satisfied, however, that the tenant didn't pay any rent for one month after the items were left and the tenant had removed substantially all of her personal property. The tenant also signed 2 documents which I find establish that the tenant did not intend to return to retrieve any of it. Therefore, I find that the landlord was justified in considering the tenant's items to be abandoned.

The regulations go on to say:

- (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 in this case made an express agreement for the landlord to dispose of the personal property and dispose of it using the funds from the security deposit to do so.

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.

In this case, I have reviewed the photographs provided by the landlord and I am satisfied that the landlord reasonably believed that the property, other than perhaps the leather chair and other items that the landlord has retained, had a total market value of less than \$500.00. I also find that the tenant has failed to establish any other market value, and the landlord was justified in disposing the other items.

In the circumstances, I am not satisfied that the tenant has established the 4-part test. There is no evidence before me that the loss exists, or that the landlord failed to comply with the *Act*, or the amount of any loss and therefore, I dismiss the application.

The landlord's agent stated during the hearing that the tenant is welcome to attend to the rental property on a pre-determined date and time to retrieve belongings currently

held by the landlord, and the tenant is entitled to do that but must make arrangements with the landlord company before attending to retrieve any items.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for return of all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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 03, 2015

Residential Tenancy Branch

