



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Frank Romanelli and Roman Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, FF

Introduction

This was an application by a former tenant for compensation representing the value of all of her personal property destroyed by the landlords. The landlords brought a cross application seeking compensation for the loss of revenue, and expenses as a result of a house fire that they allege were caused by the tenant. Only the tenant attended the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation?
Are the landlords entitled to compensation?

Background and Evidence

The tenant testified that she sent her dispute resolution package by registered mail to the landlords on November 28, 2015. She provided a tracking number and Canada Post's web site confirmed that the landlord FR signed for the package on December 3, 2015. I therefore find that the landlords were served with the tenant's application on December 3, 2015.

The tenant testified that her tenancy began approximately on August 1, 2002 and ended when a fire occurred on October 28, 2013 making her ability to reside in the unit impossible. She never returned to the unit to reside in it again. She testified that there was a lot of communication between herself and the personal landlord FR (hereinafter

referred to as the landlord) thereafter mostly by text message. The tenant testified that when she returned to claim her property about seven to ten days after the fire, there was a notice warning of asbestos contamination. Additionally the restoration personnel forbid her from entering the suite to recover her property. On or about November 8, 2013 the landlord messaged the tenant that he had been advised that the site was clear of asbestos and requested that the tenant remove her property. The tenant responded that she was attempting to arrange financing for a moving truck and requested the landlord to send her a copy of the asbestos report. The landlord did not send the report but messaged her on November 14, 2013 that unless she recovered her property by November 30, 2013 he would destroy it. There were other communications between the parties where the tenant repeatedly requested a copy of the report and the landlord requested that the tenant recover her property. Ultimately the landlord advised the tenant that he had destroyed her property as he considered it abandoned. On December 24, 2013 the landlord messaged the tenant that he made a mistake in disposing of her property in that he subsequently learned that he was required to retain it for another sixty days and requested that she meet with him in the new year to "work things out." That meeting never occurred.

The tenant made a detailed inventory of all her personal property and valued each and every item by visiting various stores to determine the replacement cost. That list totalled \$ 35,254.00. The tenant testified that at least an additional \$ 10,000.00 of her property could not be valued as it was comprised of cultural artifacts. The tenant supplied photos of all her property that were apparently taken by the landlord after the fire. The tenant testified that the fire was as a result of her son's cooking. Therefore she submitted that that the property in her kitchen which was destroyed by the fire should be deducted from her claim. The value of that property amounted to \$ 1,689.00. The tenant requested a monetary Order equivalent to the value of the rest of her property destroyed by the landlords.

The tenant testified that her security deposit of \$ 400.00 was not returned to her. She gave the landlords her forwarding address in writing in the middle of December 2013 and to date it was not returned. She testified that she did not give the landlords permission to keep any portion of it.

Analysis

The landlords failed to attend the conference call hearing. Accordingly I have dismissed all their claims.

I find that the tenant gave her evidence a clear and credible fashion. I accept her evidence unconditionally in this hearing.

I find that the fire of October 28, 2013 effectively ended the tenancy. I find that as the landlords had the tenant's forwarding address by the middle of December of 2013 they had 15 days to either return it or claim against it pursuant to section 38 of the Act. I find that the landlords did neither. Accordingly pursuant to section 38 and section 72 of the Act I am empowered to order that the tenant recover double her deposit inclusive of interest amounting to **\$ 828.34**.

Section 24 and 25 of the Regulations made pursuant to the Residential Tenancy Act prescribe the procedure that a landlord must follow regarding the abandonment of tenant's property.

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). (my emphasis added)

At common law a landlord becomes the bailor of the tenant's property left behind and the Regulations merely prescribe the procedure that they must follow. (*Bello v. Ren, BC Supreme Court 2009.*) Whether the tenant could be considered to have abandoned her property or not, it's clear that the landlords did not follow the prescribed procedure in that they disposed of her property approximately thirty days after the fire. They did not store them for another sixty days nor did they make any inventory of them. I find that based upon the tenant's description of the property and photos she tendered as evidence, a reasonable person would determine that her property was valuable and easily exceeded the value of \$ 500.00. Accordingly the landlords were at least in breach of section 25 of the Regulations. More compelling however, I find that the tenant advised the landlord that she wished to recover her property and would do so upon the landlord proving that they were not contaminated and as soon as she was able to obtain a truck to do so. In other words the tenant expressly communicated to the landlords that

she was not abandoning her belongings. Accordingly I find that whether it was in breach of the Regulations or not the landlords wrongfully destroyed the tenant's personal property. As I have found that pursuant to the 2009 Supreme Court decision of *Bello v. Ren*, a common law relationship of bailment existed between the landlords and tenant accordingly the measure of damages must follow suit. On page 7 and 8 of *Bello v. Ren* the Honourable Madam Justice Fenlon found:

[15] Section 91 of the *Residential Tenancy Act* provides that: "except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia." Absent abandonment, the Landlord did not have statutory authority to remove Mr. Bello's goods from his apartment. The Landlord was therefore a bailee at common law and owed a duty of care to Mr. Bello. Disposing of Mr. Bello's goods by taking them to the dump, particularly when he knew that Mr. Bello wanted those goods and was trying to retrieve them, is a gross breach of that duty.....

[16] The principle of "*restitutio in integrum*" governs damages for breach of a bailee's duty of care at common law. In *Ashton v. Strata Corp.* VR524, [1999] B.C.J. No. 2429 (Prov. Ct.), a case of breach of bailment for reward.....

[49] The underlying principle in awarding damages is *restitutio in integrum* - to place the injured Party in the position he was in before the damage occurred, as best as can be done. In determining the proper measure of damages, the award must be reasonable both to the plaintiff and to the Defendant.....

[18] In summary, at common law damages are awarded to put the injured bailor in the position he was in before the goods were lost or damaged. In the absence of contract, the most the bailor can recover is replacement cost or repair cost.

The tenant produced a detailed list of her personal property in which she valued the actual replacement cost of each item. Those amounts were not contested by any evidence to the contrary. In fact the landlord failed to attend the hearing. In *Powell v. British Columbia (Residential Tenancy Branch)* a 2015 decision of the BC Supreme Court, the Honourable Madam Justice Bruce, considered how much scrutiny an arbitrator must give to the stated quantum of loss in an unopposed application.

[60] Addressing the quantum of loss, Arbitrator Molnar articulated the undisputed facts that Ms. Blais had lost an opportunity to sell her trailer for \$25,000 and later mitigated her loss by selling it for \$5,000. In addition, he referred to other expenses incurred as a result of the unlawful eviction notice, including the cost of removing the structures as ordered by the landlord, the legal fees expended in regard to the removal of these structures, and the filing fee. **Assessing the loss was a simple mathematical calculation based on the proven facts.** (My emphasis added)

As I have already found that the applicant is a credible witness I accept her calculation of her loss at the amounts she claimed to be \$ 35,254.00. From that, the sum of \$ 1,689.00 must be deducted as representing the amount of property destroyed in the fire.

The monetary jurisdiction of any dispute under the Residential Tenancy Act is \$ 25,000.00 pursuant to section 58(2) of the Act. Accordingly I have reduced all of the tenant's total awards inclusive of the recovery of the security deposit to **\$ 25,000.00**.

Conclusion

I have granted the tenant a monetary Order amounting to **\$ 25,000.00**. If the amount is not paid then the Order may be enforced in the Small Claims Court of BC. This Order and decision must be served on the landlords. I have dismissed all of the landlords' claims and they will not recover their filing fee. I do not make any order as to the recovery of the tenant's filing fee.

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: March 22, 2016

Residential Tenancy Branch