



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP FF

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "*Act*") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to return the tenant's personal property, and to recover the cost of the filing fee.

The tenant, a support person for the tenant, the landlord and a support person for the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed that she received and had the opportunity to review the tenant's documentary evidence prior to the hearing. The landlord also confirmed that she did not submit documentary evidence in response to the tenant's Application.

Preliminary and Procedural Matter

As the landlord confirmed that the tenant's property was disposed of during the hearing, I have not considered the tenant's request further for the return of her personal property under the *Act*. Instead, I will consider the merits of the tenant's monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlord confirmed that she did not complete a written tenancy agreement. The parties agreed that a verbal tenancy agreement was formed that began April 1, 2015. Monthly rent of \$700.00 was due on the first day of each month.

The tenant's monetary claim of \$2,247.83 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Orthopedic office chair	\$447.83
2. 2-drawer legal size metal filing cabinet	\$100.00
3. Complete set of textbooks purchased in 2013 (claiming 50% of original value of \$1,401.78)	\$700.00
4. Box of framed photos taken on a holiday in Australia	\$500.00
5. Personal autographed book "The last good year" by Pierre Burton	\$500.00
TOTAL	\$2,247.83

Regarding the end of tenancy, the tenant testified that she texted and e-mailed the landlord that she would be vacating the rental unit which is not an approved method of ending a tenancy under the *Act*. The parties agreed as of February 1, 2016 the tenant returned the rental unit keys. The tenant testified that when she vacated the rental unit she left some personal items behind in the rental unit by accident which were the items she was claiming as she was in a rush to leave so she would not miss a ferry.

The landlord testified that all items were valued at less than \$500.00 in her opinion and had an approximate value of \$300.00 total for all personal items left behind by the tenant. The tenant writes in her evidence that she received an email from the landlord on February 5, 2016 indicating that she had four days to pick up her remaining personal items. The tenant writes that she replied to the landlord that she was too busy to pick up items so quickly and could arrange to be there during the March school break. The landlord did not agree with the March school break proposed date. The landlord also did not agree with the amounts being claimed by the tenant and considered the items to be abandoned.

The landlord testified that as of July 2016 the tenant's personal property was disposed of. The tenant confirmed that she did not have tenant's insurance. The landlord admitted that she did not respond to the tenant after a certain point as she did not want

to continue interacting with the tenant. The landlord confirmed that she did not make a written inventory of items that were being stored for the tenant.

Regarding item 1, there is no dispute that the tenant left behind a chair and did not take it with her when she was removing her personal items from the rental unit at the end of the tenancy. The tenant claims the chair was purchased in 2005 however no receipt was submitted in evidence in support of this portion of the tenant's claim. The tenant submitted a dark photo in evidence which the tenant stated showed her chair. The tenant also submitted a quote for a chair in the amount of \$447.83. The landlord testified that the chair was an old chair.

Regarding item 2, the tenant has claimed \$100.00 for a 2-drawer legal sized filing cabinet. The tenant did not provide a photo of the cabinet in support of this portion of her claim. The tenant testified that she purchased the cabinet in 2015 and submitted a quote in evidence in the amount of \$188.99.

Regarding item 3, the tenant has claimed \$700.00 for her textbooks which she has provided no photos of in evidence. The tenant referred to an April 10, 2013 email submitted in evidence which indicates that "texts/supplies" total \$1,401.78 as part of a college program. The landlord stated that there was a box of books but that she did not consider them valuable and left behind by the tenant.

Regarding item 4, the tenant has claimed \$500.00 for what the tenant described were priceless framed photos that were also located inside the filing cabinet. The tenant submitted one blurry photo of one framed photo and an obscured second frame in support of this portion of her claim. The landlord stated that the glass in the photo frames were broken and did not appear to be of any value as they were left behind by the tenant.

Regarding item 5, the tenant has claimed \$500.00 for what the tenant described was a priceless personally autographed Pierre Burton book. The tenant did not submit any photos or other documentary evidence in support of the existence of this book in the rental unit.

Analysis

Based on the evidence presented and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, there is no dispute that the tenant left personal items behind when she vacated the rental unit. Section 24(1) and (3) of the Regulation apply and state:

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,

- (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.**

[reproduced as written with my emphasis added]

Secondly, I am satisfied based on the evidence before me that the landlord's estimation of the items left behind by the tenant did not exceed \$300.00 as I find the tenant has provided insufficient evidence in support of all the value of all of the items being claimed. In reaching this finding I have considered the following:

Chair - I have considered that the chair photo was so dark that I could not determine the type of chair it was and if it would have had any value. I have also considered that the tenant did not have a receipt for the chair and the tenant made the decision to leave items behind

Filing cabinet – I have considered that there was no photo submitted of the filing cabinet or receipt to support the value of the cabinet. I also find the tenant's testimony regarding not noticing that the filing cabinet was left behind not to be reasonable as the tenant indicated that she was rushing to make a ferry and I find that it is more likely than not that the tenant made the conscious decision to leave certain items behind so that she would not miss the ferry.

Textbooks – I have considered that if the textbooks had a value of \$700.00 the tenant would have likely arranged to ensure those textbooks were included in the items she removed from the rental unit and were not left behind. Additionally, I am not convinced that the textbooks related to the email submitted claiming \$1,401.78 for "texts/supplies" were located inside the filing cabinet as there is no photo evidence to support that the textbooks were inside the cabinet.

Framed photos and book – Consistent with what I have described above for texts, based on the photos submitted which were blurry I am not satisfied that the photos left behind were of any value. In addition, I note there is no photo evidence of what the tenant claims is a "priceless" book. In support of this is that if the framed photos and book were indeed priceless, it is reasonable to conclude that the tenant would ensure she had all of her priceless items before leaving the rental unit.

Section 25 of the Regulation also applies and states:

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,**

[reproduced as written with my emphasis added]

Given the above, while I find the landlords were entitled to dispose of the tenant's personal property as it was deemed abandoned and worth less than \$500.00, I find the landlords breached the Regulation by failing to keep a written inventory of the items. Accordingly, **I CAUTION** the landlords to comply with the Regulation fully in the future.

As the landlord also failed to complete a written tenancy agreement, **I CAUTION** the landlord to comply with section 13 of the *Act* in the future.

I note that I find the tenant's claim that some of her personal items were "priceless" to be unreasonable as I find it more likely than not that the tenant would ensure all "priceless" items were removed from the rental unit upon vacating and that the tenant would not propose a date 1.5 months later at March school break to arrange to collect her personal items. Therefore, as indicated above, I find the tenant abandoned her personal items and is not entitled to any compensation as a result of her own actions.

In addition to the above, I find the tenant breached section 7 of the *Act* by failing to carry tenant's insurance to minimize her damage or loss as the landlord is not the tenant's insurer and the decision to not carry tenant's insurance is solely the responsibility of the tenant.

I CAUTION the tenant to comply with section 45 of the *Act* in the future when ending a tenancy as notices to end tenancy must be in writing.

I CAUTION the tenant to comply with section 7 of the *Act* in the future by minimizing any damage or loss as required by the *Act*.

Given the above, I **dismiss** the tenant's Application in full, **without leave to reapply**, due to insufficient evidence.

As the tenant's claim has been dismissed I do not grant the recovery of the cost of the filing fee.

Conclusion

The tenant's Application fails.

The landlord has been cautioned to comply with the Regulation in full and section 13 of the *Act* in the future.

The tenant has been cautioned to comply with sections 7 and 45 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 25, 2016

Residential Tenancy Branch