



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O

Introduction

This hearing dealt with the tenant's application for monetary compensation.

The hearing first convened on November 18, 2016. The tenant, an articulated student representing the tenant, the landlord and counsel for the landlord called in to the teleconference hearing.

Due to an administrative error, the file had been misplaced and I did not have it before me on that date. The file and all of the submitted evidence is quite substantial, and I had not had an opportunity to review the materials prior to the hearing. It was therefore necessary for me to adjourn the hearing.

The hearing reconvened on December 5, 2016. The same parties participated in the teleconference hearing, which lasted approximately 200 minutes.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in July 2010. In a decision dated April 8, 2014, the landlord was granted an order of possession effective May 1, 2014. The tenancy ended in early May 2014.

The tenant has applied for monetary compensation of \$25,696.86 for loss of personal property; \$5,750 for loss of use and enjoyment of that personal property; and \$5,000.00 for aggravated damages. In view of the limit of \$25,000.00 for monetary claims made under the *Residential Tenancy Act*, the tenant reduced his total claim to \$24,500.00. The tenant did not indicate what specific portions of his claim were being reduced or withdrawn in order to reach this total.

The tenant submitted that the landlord unlawfully entered the rental unit, seized and then disposed of his personal property. The tenant stated that he and a friend were in the process of moving his belongings out of his unit, starting with the large items, but had only removed about half of them before May 6, 2014. The tenant stated that the landlord entered the rental unit on May 6, 2014, changed the locks and seized the tenant's possessions. The tenant submitted that the landlord's entry to the unit was unlawful because they would not have had the time to obtain a writ of possession by that date. In the hearing the tenant acknowledged that during the tenancy he had changed the locks.

The tenant submitted extensive photographic and documentary evidence of the possessions that he believes were left in the rental unit and subsequently disposed of by the landlord. The tenant also provided what he believed to be fair assessments of the depreciated values of those items. The friend who was helping the tenant move provided a written statement that included all of the items that she could recall being left in the unit. The tenant submitted that the landlord's photographs were staged, as what they depict was not the condition in which he left his possessions.

The tenant stated that he did not abandon the rental unit. The tenant submitted that I should consider the BC Supreme Court decision in *Bello v. Ren* (2009 BCSC 1598), which the tenant submits stands for the proposition that if the tenant does not abandon the unit, and the landlord has not received a writ of possession or hired a bailiff, then the legislation regarding abandonment does not apply and the landlord becomes a bailee who owes a duty of care to the tenant bailor. The tenant submitted that in this case, because he did not abandon and the landlord did not obtain a writ, the common law of bailment applies.

The tenant also directed my attention to a previous dispute resolution decision between these parties, where the arbitrator noted that they did not believe that the tenant would abandon electronic property. In reading that decision, I note that the arbitrator also indicated they made no findings of fact or law regarding the tenant's withdrawn application.

The tenant stated that the landlord would not have been able to contact him by phone or email after May 6, 2016, as his phone had been disconnected and he had no access to email. In the hearing the tenant stated that he also "revoked the landlord's permission to contact [him] by phone or email" because they were intimidating and hostile toward him. The tenant stated that he contacted the landlord by regular mail on May 20, 2014, and asked for the return of his property. The tenant then sent a second letter to the landlord on August 4, 2014, again enquiring about his property. This letter, along with a copy of the May 20, 2014 letter, was sent to the landlord by registered mail.

Landlord's Response

The landlord stated that the tenant abandoned his remaining possessions, and they therefore took the required steps under the regulation to make an inventory list and store the possessions before disposing of them.

The landlord stated that they served the order of possession for the rental unit by first leaving a copy of the order in the tenant's mail box on April 28, 2014, and then by sending a copy to the tenant by priority post on April 29, 2014. The landlord stated that the priority post package was returned as unclaimed. The landlord submitted evidence that the tenant and one other person were seen moving the tenant's possessions out of the rental unit on May 4 and 5, 2014.

The landlord stated that they attended at the rental unit on May 6, 2014, and the tenant was not present and the order of possession was no longer in the tenant's mailbox. The landlord stated that it appeared that most of the tenant's possessions had been removed, and all that was left was in poor condition or "garbage." At that time, the landlord believed that the tenant had abandoned the rental unit and the remainder of his possessions.

The landlord stated that they took photographs and made an inventory list detailing every item left by the tenant, and then they disposed of potentially unsanitary or unsafe items, such as broken glass and expired food. The landlord completely denied staging their photographs of the tenant's possessions. The landlord submitted that they believed the tenant's remaining possessions were worth less than \$500.00. The landlord

provided evidence that on May 17, 2014 they stored all the tenant's remaining possessions in a portable storage unit. The landlord provided evidence that the storage unit sat on the rental property outside the house, and was easily visible from the street, for approximately two months.

The landlord stated that they attempted numerous times in May, June and July 2014 to contact the tenant. The landlord stated that they did not receive the tenant's letter dated May 20, 2014 until August 11, 2014, when it was sent together with the letter dated August 4, 2014. The landlord stated that they believed the May 20, 2014 letter was false, and created after the fact.

The landlord provided evidence that after they had not heard from or been able to contact the tenant, they disposed of his belongings over two days, on July 11 and 12, 2014. The landlord stated that even though they estimated the tenant's possessions were worth less than \$500.00, in any case the cost of disposing of those items was more than \$800.00.

The landlord submitted that the tenant's photographic evidence of his possessions merely shows that the tenant had those items in his possession at some time during his tenancy. The evidence does not show that those items were left in the rental unit and disposed of by the landlord.

Analysis

Part 5 of the Residential Tenancy Regulation addresses the issue of abandonment of personal property. Under the legislation, a landlord may consider that a tenant has abandoned personal property if the tenant leaves personal property on the rental property that they have vacated after the tenancy has ended, or if the tenant has removed substantially all of their personal property and the circumstances are such that the landlord could not reasonably expect the tenant to return to the rental property.

If personal property has been abandoned and the landlord reasonably believes that the property has a total market value of less than \$500.00; the cost of removing, storing and selling the property would be more than the proceeds of its sale; or the storage of the property would be unsanitary or unsafe, the landlord may dispose of the property.

In this case, I find that the landlord acted in accordance with the Regulation when they determined that the tenant had abandoned his personal property, and when they disposed of the property.

I accept as reasonable in the circumstances that the landlord believed the tenant had abandoned his remaining possessions, after the landlord had served the tenant with two orders of possession and the tenant had been seen moving his possessions out of the unit over two days. The tenant confirmed that he had been moving out over May 4 and 5, 2014, and that he and his friend were moving the large items first. The tenant was not present in the rental unit on the following day, May 6, 2014. It was reasonable for the landlord to believe that the tenant had moved out of the unit, after having most likely received the order of possession and moved the large items out of his unit over the course of two days.

I prefer the landlord's evidence over that of the tenant regarding the tenant's remaining possessions and their condition on May 6, 2014. I find no reason to believe that the landlord "staged" their photographs or left items out of their extensive inventory list. I accept the statements of the individuals who were present at the time regarding what they saw. The tenant cannot rely on another arbitrator's comment that they did not believe that the tenant would abandon electronic property, particularly as that arbitrator also clearly indicated that they made no findings of fact or law regarding the tenant's application. The tenant's descriptions and photographs of personal property do not provide evidence that those items remained on the property on May 6, 2014.

I accept the landlord's evidence as credible that they attempted numerous times to contact the tenant, given that the landlord did not store the tenant's possessions until May 17, 2014. The landlord cannot be faulted for the tenant's failure to provide them with a way to contact him. The tenant stated in the hearing that he revoked the landlord's permission to contact him by phone or email. The tenant did not provide sufficient evidence to establish that he did mail his letter dated May 20, 2014, and I accept as credible and consistent the landlord's statement that they did not receive it. I do not find it likely that the landlord would store the tenant's possessions, attempt several times to contact the tenant, and then not reply to him when he requested information regarding his property.

As I find that it was reasonable for the landlord to believe that the tenant had abandoned his property, it is not necessary for me to consider *Bello v. Ren* or the law of bailment.

I accept the evidence of the landlord that the total value of the remaining possessions, as described in their inventory list, and particularly after the unsanitary or unsafe items were removed, either fell below \$500.00 or fell below the costs of storing and removing those possessions. I therefore find that the landlord complied with the regulation regarding their obligations toward the tenant's property.

As I am satisfied that the landlord complied with the legislation, I accordingly dismiss the tenant's claim for aggravated damages.

Conclusion

The tenant's application is dismissed in its entirety.

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: January 4, 2017

Residential Tenancy Branch