



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, RPP, RR, MNDC

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use; setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; an order compelling the landlord to return personal property; an order reducing the rent for repairs, services or facilities agreed upon but not provided; and a monetary order. The tenant advised that the only applications she had intended to make were for the return of personal property and/or a monetary order. The hearing proceeded on those two applications alone.

Although served with the tenant's Application for Dispute Resolution and Notice of Hearing by registered mail actually received on January 23, 2017, the landlord did not appear nor did he file any evidence. The tenant testified that the landlord called her after he received the application for dispute resolution.

Issue(s) to be Decided

- Should an order for the return of personal property be made and, if so, on what terms?
- Should a monetary order be made and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced January 1, 2016. The monthly rent of \$600.00 was due on the first day of the month. The tenant paid a security deposit of \$300.00. The rental unit is a two bedroom trailer in a rural area.

The tenant testified that in addition to mental health issues she also has balance problems. These balance problems require her to use a cane. They also make it difficult for her to walk and move.

Earlier this winter the tenant's mental health workers made a home visit. They determined that her accommodation was not suitable. Through a local program they were able to find the tenant alternate accommodation. Although the new place was smaller it allowed pets. To secure the new unit the tenant had to take it immediately.

The tenant testified that she told the landlord at the end of November that she would be moving out. She also testified that the December rent was paid in full by disability. She and the landlord agreed that she would vacate the unit before mid-December; that the landlord would attempt to re-rent the unit by December 15; and that the landlord could keep the security deposit because she had given short notice.

The tenant's evidence is that she arranged for movers to move some of her belongings; the rest she moved in her car. When she left the keys in the unit on December 14 or 15 there were still things in the rental unit that she wanted to take but did not have room for. However, she did not have any gas money to come back and pick them up.

The tenant had been told that she could not bring her couches and some other items to her new place because of the rat infestation in this rental unit. She made arrangements for the Salvation Army to pick up some of her furniture and other items but she heard later from the landlord that they never did.

The tenant said she did go back to the unit the first week in January and found some items, including her computer and printer, sitting outside in the snow. She took a chair and some boxes, which the landlord helped her load. She did not take the computer or the printer because she assumed they would be too damaged to work.

The tenant said that she also received a call from her neighbour. The neighbour said he had put the tenant's belongings together in one spot near his trailer. When he returned home from work one day he discovered the landlord and some other men standing around the pile, which was on fire. The friend put out the fire but it was too late to save anything. The tenant has no idea what was in the pile nor was she clear about when this happened.

The tenant is claiming form the following items:

Vacuum cleaner	\$50.00
Computer desk	\$40.00
2 area rugs	\$50.00 each
Computer	\$200.00
Sewing machine	\$40.00

The values she assigned to these items are what she thought she would pay for similar items at a local thrift store.

The tenant also claimed the full replacement cost for some musical instruments; \$40.00 for maracas; \$20.00 fro a penny whistle; and \$80.00 for two bells.

The landlord has advised the tenant that the sewing machine is still there and could be picked up. He also told her that he did not know anything about the musical instruments.

Analysis

Section 24(1)(a) of the *Residential Tenancy Regulation* provides that a landlord may consider that a tenant has abandoned personal property if the tenant leaves personal property on residential property that he or she has vacated after the tenancy agreement has ended. Subsection (3) states that if personal property has been abandoned by a tenant, the landlord may remove the property but must deal with it in accordance with the *Regulation*.

Section 25(1) requires a landlord to store the tenant's personal property in a safe place and manner for a period of not less than 60 days after its removal from the rental unit; to keep a written inventory of the property; keep particulars of the disposition of the property for two years following the date of the disposition; and advise a tenant or the tenant's representative who requests information either that the property is stored or that it has been disposed of.

However, subsection (2) allows a landlord to dispose of the property in a commercially reasonable manner if the landlord reasonably believes that any of the following situations apply:

- 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 the sale.
- The storage of the property would be unsanitary or unsafe.

The landlord was entitled to regard these items as abandoned personal property as they were left in the unit after the tenancy agreement ended.

As explained in *Policy Guideline 16: Claims in Damages* when a claim is made by a tenant 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 tenant claimed market values for all items except the musical instruments. She cannot claim the full replacement cost of any used items, including musical instruments. If you assign a used value of 50% of the full replacement cost to the musical instruments their value is \$70.00. This brings the tenant's estimate of the value of all items for which she claims to \$500.00.

Based upon the tenant's own evidence the landlord could reasonably believe that all three of the conditions set out in section 25(6) would apply to some or all of the abandoned items:

- The total market value was \$500.00 or less.
- If the sofas were unsanitary or unsafe because of the rat infestation probably the same applied to the area rugs.
- If the items were going to be sold he would not be successful in selling them for more than someone could buy them at the thrift store. Any proceeds would be reduced by the cost of moving, storing and selling them. Included in the calculation of the landlord's costs must be some calculation for the landlord's time.

Section 7(2) of the *Residential Tenancy Act* requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

The items to which the tenant assigned the highest monetary and sentimental value were the musical instruments, none of which are large items. These could have fit into even a full car. By failing to take care of these particular items the tenant failed to take reasonable measures to mitigate her damages. The same must be said of her failure to pick up the sewing machine.

I dismiss the tenant's claims for the following reasons:

- The market value of the abandoned personal goods was \$500.00 or less.
- The most commercially reasonable manner of disposing of these items would have been to simply dispose of them.
- The tenant failed to mitigate her damages regarding the musical instruments and sewing machine.

Conclusion

For the reasons set out above, the tenants' application is dismissed.

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: February 08, 2017

Residential Tenancy Branch