Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord PL (the "landlord") primarily spoke for both landlords. MM appeared and confirmed he represented both named co-tenants (the "tenant").

As both parties were in attendance I attempted to confirm service of the respective applications and evidentiary materials. While both parties confirmed that they were in receipt of the other's application and evidence, the landlord said that the tenant's materials were served on them by regular mail and therefore not in accordance with the requirements of the *Act*. While section 89(1) of the *Act* lists the ways that an application for dispute resolution may be served and ordinary mail is not one of the manners

permitted, the landlord confirmed they received the tenants' materials. As the landlord has testified that they are in receipt of the tenant's application and evidence, and I find that there is no unreasonable prejudice to the parties and no breach of the principles of natural justice, pursuant to section 71(c) of the *Act*, I find that the landlords were sufficiently served with the tenants' application and evidence. Pursuant to sections 88 and 89 of the Act I find that the tenants were served with the landlords' application and evidence.

During the hearing both parties made applications requesting to amend the monetary amount sought in their respective applications. Both parties indicated that since the filing of their respective applications, additional costs have been incurred. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that additional amounts coming due can be reasonably anticipated I amend each of the parties' applications by increasing the landlords' monetary claim from $1,275.00 to $1,350.00, and the tenants' monetary claim from $3,043.40 to $4,131.40.

Issue(s) to be Decided

Is either party entitled to a monetary award for damages and loss as claimed?
Is either party entitled to recover the filing fees for this application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

The present application arises from a tenancy that began July 1, 2015 and ended in May, 2016. When the tenants vacated the rental premises they left a number of belongings including a clothes washer and a dryer. When the tenants did not retrieve their personal possessions the landlords delivered the items to the tenants' forwarding address on May 11, 2016, though not the washer and dryer as they were too large to transport. The washer and dryer were never retrieved by the tenants and are still being stored by the landlords.

In the previous hearing, which occurred under the file number on the first page of this decision, the other arbitrator issued the following order regarding the washer and dryer:

> The landlords are holding or storing the tenants' washer and dryer. The tenants should have an opportunity to retrieve them. I direct that the landlords provide the tenants in advance, before April 15, 2017, with two dates and times, both before April 30, 2017 when the tenants can arrange for recovery of the two appliances. The landlords' notice must state a time between the hours of 9:00 a.m. and 5:00 p.m. on a weekday and must include the location at which the appliances can be recovered.

The tenant testified that he made two attempts to recover the appliances on April 21, 2017 and June 2, 2017 and was refused access each time. The tenant said that those were not dates arranged with the landlords but dates on which his agents attempted pick up.

The landlord gave evidence that in accordance with the Order made by the previous arbitrator they sent a letter on April 12, 2017 providing the tenants with two dates on which the appliances could be picked up on April 27th or April 28th, 2017 between the hours of 4:00pm and 5:00pm. A copy of the letter was submitted into written evidence.

The landlords claim the amount of $1,350.00 for the transportation of the washer and dryer to storage and the storage fees from May, 2016 to the date of the hearing, August 30, 2017. The landlords submitted a statement of account dated May 31, 2017 into written evidence in support of their claim.

The tenants claim the amount of $4,131.40 for losses incurred. The tenant said that he has been forced to rent a washer and dryer as he could not retrieve the ones held by the landlord. The tenant said that the figure sought represents the amount of loss incurred from May, 2016 to the date of the hearing. The tenants submitted into written evidence a series of calculations performed by the tenants in support of their claim.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there is insufficient evidence in support of the tenant's claim. I accept the evidence of the parties that the washer and dryer were left in the rental unit at the end of the tenancy. I find that there is insufficient evidence that the appliances were not available to be retrieved by the tenants. Neither party provided substantive evidence that there was communication between the parties at the end of the tenancy in regards to retrieving the appliances. The tenant did not remove the appliances from the rental unit when vacating, nor did he retrieve them shortly after the tenancy ended. Neither party submitted any written evidence of communication from the tenants demanding possession of the washer and dryer. The tenants claim the cost of renting a washer and dryer beginning in May, 2016 but I find there is insufficient evidence to show why this rental was necessary. I find that there is insufficient evidence that the landlords violated the *Act*, regulations or tenancy agreement causing the tenants to incur a loss.

Furthermore, I find that there is insufficient evidence to show that the landlords have not complied with the order issued by the other arbitrator. The landlords were ordered to provide two dates before April 30, 2017 when the tenants could pick up the appliances. I accept the landlords' evidence that they provided the tenants with two dates in their correspondence of April 12, 2017, in accordance with the order. The tenant gave evidence that he made two attempts to retrieve the appliances, neither of which was on a date provided by the landlords. I find there is insufficient evidence that the landlords violated the *Act*, regulations, tenancy agreement or the earlier order. I find that the tenants' loss of use of their washer and dryer arises from the tenants' own inaction. Consequently, I dismiss the tenants' application.

The landlords apply for the cost of transporting and storing the tenants' appliances from May, 2016 when the tenancy ended to the date of the hearing.

Section 24(1) of the *Act* states that a landlord may consider that the tenant has abandoned personal property when the property is left on residential property after the tenancy has ended and the tenant has vacated. The landlord's obligations in regards to the personal property and their ability to dispose of it are outlined in sections 25 and 29 of the *Act*. Under the *Act*, a landlord may dispose of the property in a commercially reasonable manner after storing the property for a period of no less than 60 days following the date of removal.

In the present case the landlords' obligation to store the property commenced on May 11, 2016 when the landlord removed the property from the rental unit. I find that the landlord advised the tenant in accordance with section 25(1)(d) of the *Act* that the

property is being stored. I accept the landlords' evidence that costs were incurred for the transportation and storage of the appliances.

However, I find that after a period of 60 days from May 11, 2016 the landlords were no longer required under the Act to continue storing the abandoned property. I find that any costs incurred after that 60 day period was as a result of the landlords' choice to continue storing the appliances instead of disposing of them in accordance with the *Act*.

Additionally, the earlier order states that the tenants should have an opportunity to retrieve the appliances. The order provides that the landlords are to provide two dates before April 30, 2017 when the appliances could be picked up. The order does not create or renew any duty on the landlords to store the appliances after April 30, 2017.

I find that the landlords incurred the costs of storage and transportation when the tenants abandoned personal property on the rental premises in May, 2016. I find that, pursuant to the earlier order the landlords were required to store the property from the date of the earlier hearing on March 8, 2017 to April 30, 2017. I find that the costs of storage arose from the tenants' violation during those periods. I find that the storage costs incurred outside of those periods to arise out of the landlords' choice to continue storing the property.

I issue a monetary award in the landlords' favour in the amount of $525.00 the sum of the transportation costs and the storage costs for the period of May 11, 2016 to July 11, 2016 and March 8, 2017 to April 30, 2017.

While I decline to issue an order I find that the landlords have complied with the requirements of the *Act* in storing the appliances and are at liberty to dispose of the personal property in accordance with the *Act*.

As the landlords' application was successful the landlords are entitled to recover the $100.00 filing fee of their application from the tenants.

Conclusion

The tenants' application is dismissed.

The landlords are issued a monetary order in the amount of $625.00 on the following terms:

ITEM	AMOUNT
Transportation Costs	$150.00
Storage May, 2016	$75.00
Storage June, 2016	$75.00
Storage July, 2016	$75.00
Storage March, 2017	$75.00
Storage April, 2017	$75.00
Filing Fee	$100.00
TOTAL	**$625.00**

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 31, 2017

Residential Tenancy Branch