



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Powell River
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction:

A hearing was convened on July 26, 2017 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on March 02, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

On February 27, 2017, April 12, 2017, April 12, 2017, March 01, 2017, March 16, 2017, and July 07, 2017 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on July 07, 2017. The evidence was reviewed with the Agent for the Landlord and he acknowledged receipt of all of this evidence.

On July 12, 2017 the Landlord submitted 45 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on July 13, 2017. He stated that it was sent to the Tenant's current mailing address and he provided a Canada Post tracking number to corroborate his testimony.

The Tenant acknowledged that the Landlord has his current mailing address but he stated that he did not receive this evidence package. The hearing was adjourned to provide the Landlord with the opportunity to re-serve the evidence package. At the reconvened hearing the Landlord stated that the package was mailed to the Tenant on July 26, 2017 and again on September 06, 2017. The Tenant acknowledged receiving the evidence package that was mailed in September and it was accepted as evidence for these proceedings.

The adjourned hearing was reconvened on October 23, 2017 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for missing personal property?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that this tenancy began on August 01, 2015.

A copy of the tenancy agreement was submitted in evidence, which names a female Tenant and a male Tenant who has the same first name as the Applicant but a different surname.

The Tenant contends that his name was incorrectly recorded on the tenancy agreement and that he signed the tenancy agreement without noticing the error. The Agent for the Landlord does not dispute that the Tenant signed the tenancy agreement.

The Agent for the Landlord and the Tenant agree that the Landlord served the female Tenant with a One Month Notice to End Tenancy, which had an effective date of May 31, 2016. The Agent for the Landlord stated that the Landlord agreed to extend the effective date of the Notice to June 30, 2016.

The Agent for the Landlord and the Tenant agree that the rental unit was vacated on July 02, 2016.

The Agent for the Landlord and the Tenant agree that on July 01, 2016 the female Tenant made arrangements with the Landlord to store property on the residential property until July 02, 2016, at which time it would be removed by the Tenant(s).

The Tenant stated a large amount of his personal property was piled in the back yard on July 01, 2016 and when he returned on July 02, 2016 a lot of it was missing. He stated that he spoke with the new occupants of the rental unit, who informed him that it had been discarded by the Landlord.

The Agent for the Landlord stated that on July 01, 2016 and July 02, 2016 the female Tenant was moving property from the rental unit, some of which was being piled on the property to be picked up at a later time and some of it was placed in a trailer for disposal. He stated that the female Tenant was determining whether items should be placed on the "dump" pile or the pile

that was to be picked up at a later time. He stated that the items in the trailer were taken to the dump but that none of the items in the pile of personal property was disposed of by the Landlord.

The Tenant stated that he left the residential property before all of the property was moved from the rental unit so he does not know what instructions were given to the Landlord by the female Tenant.

The Tenant stated that on July 02, 2016 he went to the dump and was able to identify some of his personal property that had been piled on the property, so he presumes the Landlord disposed of those items when the Landlord disposed of other property from the rental unit. The Tenant stated that these items were damaged and were not salvageable.

The Tenant stated that none of the people on his "team" would have moved his personal property onto the trailer that held items for disposal.

The Tenant submitted a list and digital images of the property that was missing from the pile in the yard. The Landlord submitted several photographs of property that was in the process of being moved from the rental unit.

The Tenant submitted a letter from a friend who declared that he observed some of the Tenant's property piled in the yard of the rental unit and the new occupant of the rental unit told him the Landlord had given the Tenant time to remove his property.

The Landlord submitted a written statement from an agent for the Landlord who was present while the rental unit was being vacated, which corroborates the version of events provided by the Agent for the Landlord. In this statement the author declares that a large "keep-pile" was covered with a tarp and that it was still on the property on July 05, 2017.

Analysis:

On the basis of the undisputed evidence that the male Tenant signed the tenancy agreement, I find that he entered into a tenancy agreement with the Landlord, even though his name is not correctly recorded on the tenancy agreement.

On the basis of the undisputed evidence I find that the rental unit was fully vacated by July 02, 2016.

There is a general legal principle that places the burden of proving that a loss occurred on the person who is claiming compensation for the loss. In these circumstances the burden of proving that the Landlord improperly disposed of his personal property rests with the Tenant. I find that the Tenant has submitted insufficient evidence to establish that the Landlord improperly

disposed of his personal property.

On the basis of the undisputed evidence I find that personal property belonging to the Tenant was piled in the yard of the rental unit on July 01, 2016 and July 02, 2016, with the understanding that it would be recovered by the Tenant(s) shortly thereafter.

On the basis of the undisputed evidence I find that the female Tenant was determining which items should be placed on the pile in the yard and which items should be placed on the trailer which was to be taken to the dump. I note that the Tenant acknowledged he was not present during the latter part of this move and that it is entirely possible the female Tenant either moved, or arranged to move, some of the Tenant's property from the pile in the yard to the trailer designated for disposal.

I find that the Tenant has submitted insufficient evidence to refute the Agent for the Landlord's testimony that the Landlord did not discard any of the items in the pile of property that was to be picked up at a later date.

On the basis of the undisputed evidence I find that when the Tenant went to the property to recover his personal property from the back yard he determined that some of the property he believed was being stored in the yard was missing. I find there are several possible explanations for that, including that the property was stolen by a third party or the female Tenant decided that the property should be discarded without consulting the Tenant.

As it is entirely possible that the Tenant's property was discarded by the female Tenant or stolen by a third party and there is no evidence that the Landlord disposed of property from the pile in the yard, I dismiss the Tenant's claim for compensation for any of his missing property.

In adjudicating this matter I placed little weight on the Tenant's testimony that the new occupant of the rental unit told him that Landlord disposed of his personal property. In the absence of a written statement from the new occupant and in the absence of the ability to ask clarifying questions of the new occupant, I find it entirely possible that the new occupant was referring to the items that were designated for disposal by the female Tenant when he/she told the Tenant the Landlord had disposed of the property.

In adjudicating this matter I placed little weight on the Tenant's testimony that on July 02, 2016 he went to the dump and was able to identify some of his personal property that was piled on the property. I find that it is entirely possible he observed items that the female Tenant had designated for disposal and it does not establish that the Landlord discarded the items from the pile that was to be picked up at a later date.

In adjudicating this matter I placed little weight on the letter from the Tenant's friend who declared that he observed some of the Tenant's property piled in the yard of the rental unit and the new occupant of the rental unit told him the Landlord had given the Tenant time to remove

his property. I find that this evidence is of little evidentiary value as it does not establish that the Landlord discarded property from the pile that was to be picked up at a later date.

In adjudicating this matter I placed little weight on the photographs submitted in evidence, as they do not help establish that the Landlord discarded property from the pile that was to be picked up at a later date.

Conclusion:

As the Tenant has not established that the Landlord improperly discarded property belonging to the Tenant, I dismiss the Tenant's application for financial compensation.

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: October 23, 2017

Residential Tenancy Branch