



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OMNI HOWE STREET (NOMINEE) CORP and COMMUNITY BUILDERS
FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested return of his personal property or in the alternative monetary compensation from the Landlords for the value of those items.

The hearing was conducted by teleconference on September 19, 2017. The Tenant, his legal counsel, and two representatives of the Landlord, C.B.F., called into the hearing. The Landlord, O.H.S.(N.)C., did not call into the hearing, although documentary evidence submitted shows they were served by registered mail on August 25, 2017. A copy of the registered mail tracking number for the package sent to O.H.S.(N.)C. is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord, O.H.S.(N.)C. was duly served as of August 30, 2017 and I proceeded with the hearing in their absence. The parties who called into the hearing were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlords be ordered to return the Tenant's property?
2. Is the Tenant entitled to compensation from the Landlords for the value of his personal property?

Background and Evidence

The Tenant testified that the tenancy began approximately December 2015 and ended in approximately February or March 2017. The Tenant stated that C.B.F., and persons hired by C.B.F., packed up his items for him as he was not able to move or lift anything due to his health. He further testified that C.O. outreach workers hired by C.B.F. helped him find a new place and helped him move his items.

The Tenant stated that when he attempted to retrieve the balance of his belongings, approximately two weeks later, the Landlords denied him access to the rental unit. The Tenant claimed that the Landlords refused him access to the balance of his belongings and accordingly he sought their return, or in the alternative, sought compensation in the amount of \$2,825.00 for the following:

walker	\$400.00
wheelchair	\$150.00
Yamaha stereo	\$350.00
2 hot plates	\$200.00
microwave	\$75.00
laptop computer	\$150.00
2 tablets	\$400.00
Kenwood stereo	\$300.00
clothing and shoes	\$300.00

jewelry	\$500.00
total	\$2,825.00

The Tenant confirmed that he estimated the above values based on the amount he paid for the items as well as recognizing their reduced value as a result of being used. He testified that he was hospitalized for a year, and suffers from memory issues such that he was not able to precisely say when he purchased an item or the exact price paid. The Tenant also provided in evidence copies of online ads for a used wheelchair, as well as a walker.

The Tenant testified as to the purchase price and date of each items as follows:

- he stated that he purchased a new walker approximately two to three months before he moved out for which he paid \$600.00 in cash;
- he stated that the wheelchair was approximately one year old and he purchased it second hand at a flea market for \$150.00;
- he purchased a Yamaha stereo approximately two years ago. He claimed that the speakers were 500 watts. He stated that he did not remember how much he paid for the stereo;
- he purchased two double burner hot plates when he moved in for \$99.00 each or a total of \$200.00;
- he purchased a microwave just before he moved into the rental unit because there was no means to cook a meal in the rental unit;
- he purchased the lap top approximately a year for \$500-600 but claimed only \$150.00 as he acknowledged it is now used;
- he purchased two tablets approximately a year and a half ago;
- he purchased the Kenwood stereo second hand;
- he stated that all of his good clothes were left at the rental unit which he valued at approximately \$300.00;

- he stated that he had gold rings, two watches, a necklace, a wristband/bracelet which were left in the rental unit.

The Tenant stated that approximately a year ago he went onto disability as prior to that he had his own company and was gainfully employed such that he was able to purchase all of the above items.

Introduced in evidence was a letter from the Tenant's counsel, D.S., dated March 14, 2017 wherein she writes as follows:

"...

On February 28th, I called S. from C.B.F., to discuss the matter outlined below. She left me a voicemail message advising me to email you in this regard.

[The Tenant] has advised that he moved out of his unit at the [rental building] approximately 3 weeks ago. He was able to move some of his belongings to his new residence, but not all of them, including a wheelchair and other personal belongings of value. At some point, [the Tenant] returned to the [rental building] in an attempt to retrieve the remainder of his belongings but was told he was not allowed to access his former unit and that the [local] police would be called if he did not leave the premises. [The Tenant] also advised that he was told that the personal belongings that remained in his unit at the [rental building] have since been discarded.

I am therefore writing to ask you whether the personal belongings left in [the Tenant's] former unit at the [rental building] had in fact been discarded? If so, please state the reason for this. If not, I would be happy to assist with arranging for a time for [the Tenant] to come retrieve those belongings.

..."

Counsel for the Tenant confirmed that she did not receive a response to the above email. She also stated that she initially spoke to C.B.F. staff at the number which was provided on the 2 Month Notice to End Tenancy (a copy of which was provided in evidence) and the person to whom she spoke told her to contact J.R. (the person to whom the email was sent).

In response to the Tenant's claims, C.B.F.'s representative, C.W., testified that the tenancy began February 20, 2015. She stated that he moved out February 7, 2017. She explained that the rental unit was located in a supported housing facility wherein the occupants are provided assistance with physical health, mental health issues, as well as addiction issues.

C.W. stated that the Tenants belongings were packed up February 6, 2017 by C.B.F.s' representatives and persons hired by C.B.F. to relocate the occupants of the rental

building. She stated that there was a re-housing effort to move all the occupants from the rental building over the course of two years and four months which she further described as a concerted effort by a very large team to move all of the occupants and their belongings to permanent housing.

C.W. confirmed that she was not at the rental property when the Tenant's items were moved out although she stated that she was informed that anything of value was packed up with the Tenant present.

C.W. stated that she was further informed that the Tenant returned to the building on a few occasions to speak with the C.B.F. staff as he had built up relationships with them. She further claimed that she was informed that at no time did the Tenant ask for any items.

C.W. confirmed that it is C.B.F.'s position that any belongings which the Tenant had were taken with him when he moved.

C.W. also stated that after February 28, 2017 the building was taken over by O.H.S.(N.)C. (the other named Landlord on the Tenant's Application) and that any items which were left would have been in their possession.

In response to the Tenant's advocate's email of March 14, 2017 (wherein she asks about the Tenant's missing belongings) C.W. stated that she did not have any information as to whether this communication was responded to or not.

V.N. also testified on behalf of C.B.F. She confirmed that she was also not present when the Tenant's items were packed up and moved. She stated that the staff members who assisted in relocating the occupants of the building were hired on a contract basis by the Landlords such that the Landlords no longer has contact with any of the staff who were there when the Tenant's items were packed up.

C.W. noted that it was the Landlord, O.H.S.N.C., who blocked the Tenant's access to the building as of February 28, 2017. C.W. stated that on February 28, 2017 C.B.F. staff were able to access the building and confirmed that there were no valuables left in the building.

In closing, Counsel submitted that it was clear the Landlords violated section 25 of the *Regulations* as it relates to the Tenant's belongings. She also noted that the Tenant gave first hand testimony of what existed and what happened when he moved out;

whereas, the C.B.F.'s representatives simply denied those items existed, and relied on hearsay or second hand information as to what happened. She further pointed out that the persons hired by the Landlords who moved the Tenant did not attend for cross examination.

Counsel submitted that the Tenant suffered a loss as he did not have his walker or a wheelchair. She stated that he did the best he could in terms of trying to recover his items and when he was unable to do so he sought the assistance of a lawyer.

Counsel further submitted that the Tenant's testimony was not supported by photos or receipts as this was completely unexpected. She stated that he did not think ahead to take photos of all of his belongings as he had a full expectation that all of his items would come with him when he was moved to the new place.

In closing C.B.F. submitted that the Tenant came back to the rental unit and took all of his belongings. She also stated that if they were of value he would have taken them at that time.

Analysis

The Tenant applies for return of his personal possessions pursuant to section 65(1)(e) of the *Residential Tenancy Act* or in the alternative, compensation for the value of the items.

After consideration of the evidence before me, the testimony of the parties, and on a balance of probabilities I find as follows.

The evidence indicates that C.B.F., and persons hired by C.B.F., assisted the Tenant (and other occupants of the rental building) in finding alternate accommodation, as well as packing and moving his items.

The Tenant provided affirmed testimony as to the items which were left behind, as well as the date of purchase and the approximate replacement cost. The Tenant confirmed that he had his own business and that as a result of health issues discontinued work approximately one year ago. He stated that during his period of employment, he purchased the subject items.

C.B.F.'s representatives stated, based on the information they were provided, that the Tenant retrieved all of his belongings. The persons hired by the Landlord who assisted

the Tenant in packing and moving his items did not attend the hearing and did not provide testimony. I find the Landlord is liable for the actions of the contractors hired by them to assist the Tenant in packing and moving his items.

Where the evidence of the Tenant and C.B.F.'s representatives conflicts I prefer the evidence of the Tenant. The Tenant provided first hand testimony of what happened the day his items were moved; conversely, all information provided by C.B.F.'s representatives was hearsay as neither of them were present when the Tenant's items were packed up and moved. The evidentiary problem posed by hearsay evidence is that it is information received from others who are not in attendance at the hearing, such that the veracity of the information cannot be determined.

While it would have been beneficial for the Tenant to have provided photos of the subject items, counsel aptly noted that the Tenant did not take photos of his personal effects as he had no reason to believe they would not be delivered. C.B.F.'s representatives confirmed that moving the Tenant was part of a large scale effort to rehouse all of the occupants of the building, and I find it was reasonable for the Tenant to assume his items would be moved to his new residence.

I am persuaded by the Tenant's testimony that the items existed and were not delivered to him. The evidence confirms that shortly after moving from the rental unit, the Tenant sought the assistance of a lawyer as he was unable to retrieve his items. Documentary evidence confirms that the Tenant's legal counsel then communicated with C.B.F. and asked about the Tenant's "wheelchair and other personal belongings of value". I accept the Tenant's counsel's testimony that she did not receive a response to her communication. C.B.F.'s representatives at the hearing were unable to testify as to whether a response was sent. In the circumstances find it unreasonable for the Landlords to fail to respond to this request.

Shortly thereafter the Tenant made his Application for return of his items, or in the alternative, financial compensation for the loss of those items.

Based on information provided to the Tenant by the Landlords, it appears likely that the Tenant's items were discarded; consequently, I am unable to order their return pursuant to section 65(1). I therefore find the Tenant has suffered a financial loss equivalent to the value of those items as set out on his Monetary Orders Worksheet. Notably, those values were not disputed by C.B.F.'s representatives.

Conclusion

The Tenant's application for monetary compensation in the amount of **\$2,825.00** is granted. The Tenant is awarded a Monetary Order in this amount and must serve the Order on the Landlords as soon as possible. Should they fail to pay, the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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 13, 2017

Residential Tenancy Branch