



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 10, 2018, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on January 12, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated January 5, 2018 (the "One Month Notice");
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf and was accompanied by her parents, who provided support. P.W. attended the hearing on behalf of both Landlords and was accompanied by K.L., a witness. The Tenant, P.W., and K.L. provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Application package was served on the Landlords in person. Although the Tenant could not recall the dates these documents were served, P.W. acknowledged receipt on behalf of the Landlords.

In addition, the Landlords submitted documentary evidence in response to the Application. K.L. testified he was present when the documentary evidence was left in a newspaper box at the address for service on the Application. K.L. also testified the Landlords' documentary evidence was served on the Tenant by registered mail. The Tenant denied receipt. Accordingly, I find there is insufficient evidence before me to conclude the Landlords' documentary evidence was served on the Tenant in accordance with the *Act*. As a result, it has not been considered in this Decision. However, in light of my findings below, this determination has not impacted the outcome.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

According to P.W., the tenancy ended when the Tenant abandoned the rental unit. She testified that she came to the conclusion that the rental unit and the Tenant's personal belongings had been abandoned during an inspection of the rental unit on November 23, 2017. The Tenant acknowledged she has not resided in the rental unit since mid-January 2018.

Pursuant to section 44(1)(d) of the *Act*, and in light of the Tenant's admission, I find that the tenancy ended when the Tenant abandoned the rental unit in mid-January 2018. Accordingly, it is not necessary for me to consider the Tenant's request to cancel the One Month Notice (CNC) or for an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement (OLC). Only the Tenant's monetary claim has been considered.

Issues

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlords submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on May 1, 2015. As noted above, the tenancy ended mid-January 2018, when the Tenant vacated the rental unit without notice. At the beginning of the tenancy, the Tenant paid a security deposit in the amount of \$524.50, which the Landlords hold.

The Tenant testified that she was on vacation in Hawaii in December 2017. When she returned to the rental unit on or about January 1, 2018, she observed a number of missing items including crystals, stones, books, her bed, art supplies, bedding, jewelry, boots, and an Apple TV.

In reply, P.W. testified that notice was given to enter and inspect the rental unit on November 23, 2017. K.L. was present for the inspection. It was observed that the

rental unit was unsecured, the patio door was wide open, and the heat was turned up. K.L. noticed the rental unit was infested with bugs. P.W. referred to an extraordinary amount of garbage in the rental unit, as well as rotting vegetables. The bed did not have any bedding and there were some unsanitary “personal” items on the bed. P.W. and K.L. formed the opinion at that time that the rental unit was unoccupied and had been abandoned, along with the contents.

Due to the unsanitary condition of the rental unit and the Tenant’s belongings, the Landlords disposed of the Tenant’s bed and couch.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenant claimed \$3,950.00 for a number of items she stated were missing on her return from vacation. These items are summarized above. The Tenant

suggested the Landlords must be responsible because only the Landlords have a key to the rental unit. The Landlords acknowledged they disposed of the Tenant's bed and couch, but denied knowledge of the whereabouts of the other items listed by the Tenant. Rather, P.W. submitted that the rental unit was not secured and that anyone could have entered.

I find there is insufficient evidence before me to conclude the Tenant is entitled to the relief sought. The Tenant's claim was not particularized, and she did not submit documentary or digital evidence in support of the value of the missing items. Further, I find there was insufficient evidence before me to conclude the Landlords were responsible for the loss of the Tenant's personal property, except for a bed and a couch, which was admitted.

Despite my findings above, I find that the Landlords disposed of items that had not been abandoned by the Tenant, contrary to the *Act* and the Regulations. Specifically, section 24 of the Regulations describes the circumstances in which a landlord may consider a tenant's personal property to be abandoned. It states:

(1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.*
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.*

[Reproduced as written.]

Based on the above, I find the Tenant had not abandoned her personal property at the time of the inspection on November 23, 2017. The tenancy had not ended, the Landlords had not received notice of the Tenant's intention not to return to the residential property, and the circumstances did not suggest the Tenant could not reasonably be expected to return to the rental unit. Indeed, the Tenant testified she did return to the rental unit after her vacation on or about January 1, 2018.

Further, section 25 of the Regulations stipulates what must be done with personal property that is removed from a rental unit:

(1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,*
- (b) keep a written inventory of the property,*
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and*
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.*

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,*
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or*
- (c) the storage of the property would be unsanitary or unsafe.*

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

[Reproduced as written.]

On behalf of the Landlords, P.W. testified that the Tenant's bed and couch were disposed of because of their unsanitary condition. However, I find there is insufficient evidence of the condition and value of these items, that the cost to remove and store them would have been more than the proceeds of sale, and that storage would be unsanitary or unsafe. Accordingly, I find the Landlords were not entitled to dispose of the Tenant's bed and couch. In light of the Landlords' breach of the *Act* and Regulations, and in the absence of sufficient evidence of value of the bed and the couch from the Tenant, I find the Tenant is entitled to recover from the Landlords the nominal amount of \$250.00.

Having been partially successful, I find the Tenant is also entitled to recover the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$350.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$350.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 8, 2018

Residential Tenancy Branch