



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 356637 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

The landlord filed an application for dispute resolution on July 25, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”). The landlord seeks the following relief under sections 67 and 72 of the Act:

1. a compensation order for costs to remove garbage as ordered by the city; and,
2. a compensation order for recovery of the filing fee.

A dispute resolution hearing was convened on September 17, 2018, and the tenant, the tenant’s advocate, the landlord, and the landlord’s agent attended the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

This is my decision in respect of the landlord’s application.

Issues to be Decided

1. Is the landlord entitled to a compensation order for costs to remove garbage as ordered by the city?
2. Is the landlord entitled to a compensation order for recovery of the filing fee?

Background and Evidence

The landlord agent (referred to as the “landlord”) testified that the tenant entered into a tenancy on October 1, 2009. Rent was originally \$850.00 a month, and is currently \$929.00. A copy of the tenancy agreement was submitted into evidence.

In July or August 2017, the then-building manager brought it to the landlord’s attention that the tenant was trying to help sell furniture of a family in a nearby house, who were moving away. In August, after purportedly having a garage sale (at which the tenant helped the family sell various items), various pieces of unsold furniture were left alongside the landlord’s building, in which there are various rental units. A short time later, the miscellaneous furniture was “dumped in”—the pool area.

The building manager took photographs of the furniture and items and filed an incident report on August 11, 2017. The landlord sent a letter on August 11, 2017, to the tenant, in which the landlord states that “we have a problem with dumped furniture that was left at our garbage and pool area” and that (reproduced as written) “Lots of the tenant complains that you initiate this incident by asking them to buy or take some furniture [. . .].” Further, the letter goes on to state that “Some people were saying that he asked them to dump the furniture to our garbage area instead of him.” A copy of the August 11, 2017, letter was tendered into evidence by the landlord.

On August 17, 2017, the landlord wrote a letter to the tenant asking him to “stop facilitating such dumping.”

In a further letter dated December 7, 2017, the landlord advised the tenant that “We received a report from the building manager that during the month of August of 2017 you facilitated a friend of yours, residing at that time on the Shannon Gardens neighbourhood house, to dump on the garbage area, pool house, all their remaining furniture and household items during the sale of their property.” The letter goes on to state that the landlord was required by the municipality to have all items removed.

The letter from the municipality (dated August 21, 2017) states that a recent inspection of the property by the municipality “revealed that the Property is unsightly.” It then states that “At the time of our inspection [the letter does not refer to a specific date of the inspection], there was discarded materials, rubbish and refuse such as household furniture, sofas, couches, chairs, mattresses, cupboards, overflowing garbage bins and a large amount of miscellaneous garbage on the Property, making it unsightly.” The

letter concludes by asking the landlord to remedy the situation within 7 days of the date of the letter.

A copy of the letter, and a copy of the letter from the municipality were submitted into evidence.

The landlord testified that the area near the pool was, especially in the years 2016 and 2017, an area where discarded items, garbage, and other unused furniture and household furnishings were frequently dumped by unknown people, but presumably various tenants. There was, as described by the landlord, a “culture of tenants dumping furniture.” As a result of a strongly worded notice to all tenants and a temporary clean-up fee of \$25.00 imposed on each tenants’ monthly rent, after three months the landlord said that the culture was changed for the better, and that a lot less dumping has occurred.

As a result of the ongoing issue of dumping in 2016-2017, the landlord contracted a disposal company to remove garbage and items dumped near the pool. A copy of the disposal service company’s invoice dated September 12, 2017, reflects three charges, one for a regular monthly garbage load, one charge for “Overflowing garbage from bins in pool area,” and a third charge for “Clean up of junk, furniture and mattresses around pool area left by tenant of unit [rental unit address]” in the amount of \$625.00. This is the amount claimed by the landlord against the tenant in their application. A copy of the invoice was submitted into evidence.

The landlord testified that on September 12, 2017, she and the tenant participated “in a very engaging discussion” during which the tenant acknowledged having a friend help him sell the family’s furniture. When sent an invoice for the \$625.00, the landlord stated that the “tenant denied everything” having to do with moving any furniture and presumably dumping it.

In cross-examination, the tenant’s advocate (the “advocate”) asked the landlord whether they had any photographs of the tenant dumping the furniture. The landlord responded that they did not. However, the landlord argued that the tenant’s conduct and admission as to having a friend help sell furniture leads her to submit that the tenant must have dumped the furniture, or let someone who the tenant allowed on to the property to dump the furniture. The advocate submitted that it was simply an assumption that the landlord was making that the tenant must have dumped the furniture.

The advocate asked the landlord whether they had any witnesses to the alleged dumping. They did not.

The advocate then asked the landlord what, if any, proof the landlord had that the furniture was owned by the family. The landlord responded that the photographs submitted into evidence show that the furniture, especially the chairs, is the same furniture in front of the home as it is near the pool area.

In support of his position, the tenant submitted into evidence a “petition” in which 20 residents of the property signed a three-page document, on the top of which reads, in part, “I confirm that [. . . the tenant] did not sell any items or ask me to dispose of garbage on [landlord’s] property. Additionally, [tenant] himself did not dispose of any garbage on [landlord’s] property. The petition is dated August 27, 2018.

Regarding the ongoing issue of dumping in the period 2016-2017, the advocate asked the landlord whether, given the ongoing, previous issues of dumping, it was possible that someone else dumped furniture. The landlord responded that she was “99% certain” that it was not dumped by anyone else. Further, the landlord submitted that the family were eager to move after selling the house, and simply rushed to dump everything before leaving.

An elderly man in his mid-70s, the tenant testified that he is a cancer patient and uses a cane. He adamantly stated that he never dumped anything, “not even a piece of wood.” He is a retired plumber and does not drink alcohol or use drugs. He loves the people he lives with, and “the people love him.” He again repeated that he did not dump anything. While he acknowledged helping the family in trying to sell some of their property, and that he had a friend help in that regard, he does not believe that he did anything wrong in that respect. “If I’m guilty, send me to jail!” he said. I advised him that I did not have the authority to sentence parties to incarceration.

The tenant’s advocate argued that as the tenant is an elderly man who uses a cane, it would have been impossible for him to move large furniture.

In her submission, the landlord argued that while the tenant was not seen dumping the furniture, part of his responsibility as a tenant is not to allow other persons who he lets onto the property to engage in such activities as dumping furniture.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord seeks a monetary order for compensation for removing garbage. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party. In deciding whether compensation is due, I must determine the following: (1) has a party to a tenancy agreement failed to comply with the Act, the regulation, or the tenancy agreement? (2) If yes, did loss or damage result from that non-compliance? (3) Has the party who suffered loss or damage proven the amount or value of that damage or loss? (4) Has the party who suffered the loss or damage acted reasonably in minimizing the loss or damage?

Section 24 of the tenancy agreement states that “No rubbish, boxes or papers shall be place or left in corridors, parking areas or other common areas of the residential property, except those areas designated for disposal.”

In this case, we have two parties making diametrically opposed accounts of events or circumstances regarding the dumping of unwanted furniture. While the landlord does not have to prove beyond a reasonable doubt (or, to a point of 99% certainty) that the tenant was responsible for the dumping of the furniture, the landlord does have to establish on a balance of probabilities that the tenant was responsible for dumping the furniture. Or, that the tenant allowed or permitted someone onto the property who then dumped the furniture. The landlord testified that the tenant said he had a friend try to sell the furniture. And that the friend dumped the unsold furniture. The landlord submitted into evidence a copy of an incident report which states that “Some people were saying that he asked them to dump the furniture to our garbage area instead of him.” However, the landlord called no witnesses who confirmed this.

The tenant, however, tendered into evidence a signed petition consisting of twenty signatures of tenants declaring that no such conduct was undertaken by the tenant. In

summary, there are no witnesses to the alleged dumping, two contradictory documents pertaining to the tenant either dumping, or encouraging the dumping of furniture, and no additional evidence that might lead me to infer that the tenant (or the tenant's friend) was, in fact, responsible for dumping the furniture.

Further, I note that the landlord has had an ongoing problem of things being dumped in the pool area from 2016 to 2017, which raises a strong possibility that a third party (perhaps, I might speculate, even the family who sold the home and moved away) was responsible for the dumping.

In summary, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the tenant either dumped the furniture, or, that the tenant was responsible for permitting another person to dump the furniture. As such, I do not find that the landlord has established that the tenant failed to comply with the tenancy agreement, and I thus find that the landlord has not met the onus of proving their claim for compensation.

Conclusion

I dismiss the landlord's application without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 17, 2018

Residential Tenancy Branch