



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties also called one witness each, who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

During the course of the hearing, the landlord advised that some of the tenant's evidence was not provided to the landlord. The tenant replied that the later evidence had been sent to the landlord by email and was in response to evidence that the landlord provided. Email is not an appropriate method of serving evidence, and I decline to consider that evidence. No other issues with respect to service or delivery of documents or evidence were raised, and all other evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation due to the landlord disposing of the tenant's personal property?

Background and Evidence

The tenant testified that this fixed term tenancy began on December 1, 2016 and was to expire on December 31, 2017 thereafter reverting to a month-to-month tenancy, however the tenancy ultimately ended on February 28, 2017 by mutual agreement. Rent in the amount of \$1,700.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$850.00 which has been returned to the tenant, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing by the landlord.

The tenant further testified that she kept a large fish tank base in the storage room down below the rental unit because it was very large. It weighs about 600 pounds and is heavy duty; custom made to hold a 300 gallon fish tank. A photograph of the tank and base has been provided for this hearing, however during the tenancy, the tenant kept the tank at her parents' house. The tenant's father had purchased the base for her and paid \$7,500.00, plus taxes.

At move-out, the tenant's furniture and other items were placed into a moving truck, but there was no room for the fish tank base, and not enough people to move it. The landlord wanted the tenant's belongings out of the rental unit because new tenants were moving in. The tenant apologized to the landlord stating that she would need 5 days to retrieve the fish tank base with her father because of its weight and there was no room on the moving truck, and the landlord said that was fine. The tenant called the landlord 4 days later, but the landlord said he already had someone take it to the transfer station, and that the new tenants needed access to the storage room. The tenant testified that the base was visibly worth more than \$500.00, and the tenant did not authorize the landlord to dispose of it.

The tenant contacted the company that custom-made the tank base, and the millworker who made it was away on vacation. The tenant obtained an Invoice, a copy of which has been provided for this hearing, which was given to her in an envelope. It is dated November 4, 2016 in the amount of \$7,500.00, plus \$646.25 taxes. When the millworker returned from vacation, the tenant explained that the landlord had thrown away the base and the millworker gave the tenant a handwritten letter with dates to show that the base was relatively new. A copy has not been provided for this hearing, however a note marked "Reference #8" has been provided for this hearing which is not dated, but signed and states that the owner of the millwork company designed and installed an aquarium base for the tenant at the beginning of 2016, at a cost of \$7,500.00 before taxes and that her father had paid in full. The tenant claims \$7,696.25, being the cost of the Invoice, including taxes, less \$500.00 for installation, for which the landlord is not responsible.

The tenant's witness is the tenant's boyfriend who testified that he also resided in the rental unit with the tenant. The witness has also provided a written statement.

The witness was present at move-out, and the parties completed a walk-through of the rental unit, and the landlord returned the security deposit to the tenant. The tenants had to book an elevator, and only had about 2 hours to complete the move. When leaving, the tenant and the witness spoke to the landlord about the fish tank base. They told the landlord there was no room to put it on the moving truck, and they would return within 5 days to pick it up. The landlord said that was okay, and told the tenant to give him a call.

The witness was also present when the tenant called the landlord about 5 days after moving out. The landlord advised that the new tenants needed the storage space, and the landlord had disposed of it by having it taken to the transfer station.

The landlord testified that he does not know where the fish tank base is. The parties walked through the rental unit, and the landlord never saw the tenant again or spoke to her after February 28, 2017. The parties didn't inspect the storage room at move-out because the tenant had 4 guys and a big truck, so the landlord didn't think she would have left anything behind. Tenants are required to get their own locks for the storage units, and when the tenancy ended, the landlord didn't check the storage unit, but checked when the new tenants moved in. The door was open and there was no lock.

The landlord has also provided a written statement stating that the tenant failed to pay rent for February, 2017 and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued on February 6, 2017. It also states that the tenant has never paid the \$1,700.00 for February's rent, and alleges that the tenant has provided false information and fabricated documents. The landlord has also provided an online news report which names the tenant as being involved in criminal activity.

The landlord testified that the Invoice provided by the tenant is not real. On or about January 15, 2019 the landlord visited the shop and the millworker and a lady were present. The millworker said he didn't recognize the Invoice. The landlord and his son went to visit the workshop again on about January 28, 2019 to get some evidence from the millworker, and the millworker said he didn't recognize the Invoice or the letter that the tenant has provided for this hearing. The millworker provided an email to that effect to the landlord, which has been provided for this hearing. Further, the Invoice also shows 8.75% tax. The landlord asked the lady in that office who said it was European Tax, not B.C. Tax.

The landlord denies ever speaking to the tenant about the fish tank base, and the tenant never mentioned it to the landlord. The landlord denies telling the tenant that the new tenants carried it out, and testified that the tenant filed this application 8 months later, which was the first time the landlord heard of it.

The landlord's witness is the landlord's adult son who testified that he was not present at move-in or at move-out, but has assisted his father respecting this Application made by the tenant. The witness has never been in the storage area for the rental unit, and testified that a new tenant was moving in the day after the tenant moved out. The witness' father owns perhaps 4 apartments.

The witness testified that most of his knowledge of the tenancy comes from what his father told him, but because the Invoice provided by the tenant has an Invoice Number "INV1,"

which is too generic, that prompted the witness and the landlord to go to the millworker's office with a copy of the Invoice and the letter allegedly from the millworker. The millworker provided the landlord with a mock version of the company's Invoices, which has been provided as evidence for this hearing which has a different format, and stated that the information in it is an example only.

The witness then sent a copy of the Invoice provided by the tenant to the millworker by email, as well as a copy of the letter from the millworker that the tenant has provided as evidence for this hearing. The millworker responded that he had supplied the fish tank base, but he did not recognize the attachments as issued by himself or his office.

The witness also testified that the letters provided by the tenant from the tenant's father, the millworker and the tenant's witness all have the same font and style of writing and none are dated; it's not likely that different people actually wrote them.

Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. what efforts the claiming party made to mitigate any damage or loss suffered; and
4. the amount of such damage or loss.

The *Residential Tenancy Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and the onus is placed on the landlord to ensure the reports are completed in accordance with the regulations. In this case, no one has provided a copy of any condition inspection reports, and the landlord testified that the storage area was not inspected at move-out.

I have reviewed all of the evidentiary material, and with respect to element 1 in the test for damages, it is clear that the landlord didn't inspect the storage area. I accept the testimony of the tenant and the independent testimony of the tenant's witness that the fish tank base was in the storage area at the end of the tenancy.

With respect to element 2, the regulations state that if personal property is abandoned by a tenant, the landlord has certain obligations with respect to that property, particularly where the value of the said property amounts to \$500.00 or more. Whether or not the landlord

should have considered the item abandoned, in viewing the photograph, I find it reasonable that the landlord would know that the property had a value of \$500.00 or more, being obviously a very large custom-made piece of furniture. The landlord also testified that he does not have keys to the storage area for the rental unit and tenants are required to provide their own locks. He also denied every allegation made by the tenant including any knowledge of the base of the tank or anything inside the storage unit. That is disputed by the tenant and the tenant's witness. The landlord also denied conversations about the item, and raised issues respecting the tenancy, such as unpaid rent, that were not relevant to this application, and I am very satisfied that the landlord did so simply to paint a negative picture of the tenant, that she was an unreliable and unwanted tenant. I also find that the landlord was angry with the tenant. Having found that element 1 in the test for damages has been established, and considering that the landlord failed to comply with the regulations, I find that the tenant has established element 2; the personal property was in the storage unit and the landlord failed to deal with it appropriately. Due to its size and custom design, I am also not satisfied that the fish tank base was taken to a local transfer station.

I also consider the testimony of the tenant and the tenant's witness that the tenant told the landlord her father would return in 5 days to retrieve the item; that the landlord told the tenant to call to arrange it; that the tenant called the landlord after 4 days; and the landlord told the tenant he had disposed of it. All of those facts have been verified by the tenant's witness. I find that the tenant did what was reasonable to protect the asset, and has established element 3 in the test for damages.

With respect to element 4, I accept that the landlord attended at the millworker's office twice, once with the landlord's witness also present, and obtained a sample invoice from the millworker. It absolutely differs from the Invoice provided by the tenant, however the one provided by the tenant says it's an Invoice, but the one provided by the landlord is not an Invoice at all, but a Quotation. Quotes and actual Invoices often differ in format and appearance. I find that the invoice obtained by the tenant is and was very generic, however the tenant testified that the millworker was on vacation when the tenant requested a copy and the tenant subsequently received documents in an envelope from the millworker's company. I have no reason to disbelieve that testimony, however it's clear that the person who prepared the contents of the envelope didn't make a photocopy of a previous Invoice, but recreated a new one with a generic Invoice Number. I cannot find, as the landlord contends, that the tenant fabricated the Invoice because if she had done so, she would not have added in European Tax.

It is not unusual for parties to prepare notes or letters for "witnesses" to provide at hearings. The note from the tenant's father is signed and sets out the amount that he paid.

The millworker's note is also signed and states that he did design and install the aquarium base at a cost of \$7,500.00 before taxes and the tenant's father paid in full. The Quote provided by the landlord contains a signature of the millworker, but it is a digital signature and cannot be compared. The millworker responded to the landlord's email confirming that he had supplied the fish tank base, but he did not recognize the attachments as issued by himself or his office. I note that it does not say that the signature on the letter is not his, and the email does not state the amount.

Having viewed all of the evidence and hearing the parties and witnesses, I find that the tenant has not provided false information or fabricated documents. I find that the tenant received an Invoice from the millworker's company that was not identical to the original invoice. The millworker confirmed in an email that he did supply and install the aquarium base. The signed letters of the tenant's father and the millworker indicate a cost of \$7,500.00 in addition to taxes, as does the re-created Invoice.

It is not clear to me whether or not the \$500.00 installation was included in the amount. I find that the tenant has established a claim of \$7,500.00, less \$500.00 for installation that the landlord is not responsible for. It is not clear to me what taxes were paid or charged to the tenant's father by the millworker.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,000.00.

This order is final and binding and may be enforced.

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 07, 2019

Residential Tenancy Branch