



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee.

The tenant, his advocate, and the landlord appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issues

Prior to the hearing, the tenant submitted a spreadsheet listing an inventory of his personal property. The evidence was submitted in a format I was unable to open; however, the landlord confirmed that he had received the tenant's evidence and had the opportunity to review it.

Due to this confirmation, I allowed the tenant to re-submit his inventory list after the hearing, in a format which would allow me to open the document. The tenant was

advised that I would allow until the end of the day of the hearing to submit the document, and I note that he did so. I have reviewed and accepted the inventory.

Additionally, the landlord submitted that he had sent in evidence prior to the hearing; however, despite the tenant acknowledging that he had received it, the evidence was not received by the Residential Tenancy Branch ("RTB"). After questioning, the evidence appeared to be related to a possible claim by the landlord against the tenant; however, he stated that he submitted the evidence in early May. Due to the late submission of evidence, I did not allow the landlord to submit evidence to the RTB and I note that he did not request the same.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and to recover the filing fee paid for his application?

Background and Evidence

The undisputed evidence was that this tenancy began in January 2015, that monthly rent was \$850.00 and that the tenant paid a security deposit of \$850.00 at the start of the tenancy.

The tenant's monetary claim is \$4,500.00, for the value of his personal property.

In support of his application, the tenant and his advocate, by way of testimony and documentary evidence submitted that on November 8, 2018, the tenant left the rental unit to stay with his parents as a result of severe depression and anxiety. On December 6, 2018, the tenant and his parents visited the rental unit to retrieve some clothes and his computer. All other items of the tenant's personal possessions were left in the rental unit.

The tenant submitted that on December 10, 2018, the tenant made a rent payment by interact transfer, his usual method, to cover the November rent arrears and the December rent payment. This amount was and remains uncollected by the landlord.

The tenant's advocate submitted that the tenant was not able to access his email or text messages due to his depression and by a severe wind storm hitting the area where they were living on December 20, 2018, creating power line issues.

The tenant's advocate submitted that on January 15, 2019, the tenant was hospitalized as a result of mental illness, at which time they were able to access the tenant's cell phone. The tenant's advocate submitted at that time, they learned the landlord had issued an eviction to the tenant, via text message.

The tenant's advocate submitted that he contacted the landlord on January 15, 2019, to advise him of the tenant's condition and was informed that the landlord was looking to re-rent, having believed the tenant abandoned the rental unit. On January 17, 2019, the landlord advised the tenant his possessions had been disposed of.

The tenant's inventory is reproduced below:

Item:	personal value	Value/Estimate
<u>Furniture:</u>		
Couch/chair		150
table glass		25
table wood		10
shelves etc		50
<u>Tools:</u>		
power tools/w batteries		1000
hand tools		500
tool chest		200
<u>Personal items:</u>		
bike		400
auto bike rack		100
snowboards/boots		400
snowboard goggles		100
snow outer wear gloves etc.		100
vintage 10mm camera and projector	gift from deceased grandparents	200
COIN collection	gift from deceased grandparents	500
misc clothes/shoes		400

high school year books/deploma	irreplaceable	?
Personal important documents, TAX FILES	identity left possible	
cooking text cook		200
Plumbing textbooks/and work		400
gold plated watch with diamond	gift from deceased grandparents	100
guitar	gift from farther	200
<u>family pictures, keep sakes</u>	irreplaceable	200
PASSPORT/BERITH CERFICATE	hard to replace and an offence to dispose of.	
<u>Electronics:</u>		
XBOX 360 and games controllers		75
TV		75
microwave		100
radio and other small audio gear		100
Space heaters		100
<u>Kitchen</u>		
Knifes/steals		150
crystal glasses		50
plates/cooking pots/pans		100
normal glass wear		20
utensils		25
Total		6030.00

The tenant's other relevant evidence was a written statement of events by his advocate.

I note that the tenant's inventory showed a total value of his lost personal possessions assessed at \$6,030.00; however, the tenant's advocate explained during the hearing the monetary claim was \$4,500.00 to compensate for the unpaid rent which was not redeemed by the landlord and as a way of compromise.

Landlord's response-

The landlord agreed that he had all the tenant's personal possessions removed and disposed of, as he considered that the tenant had abandoned the rental unit. The landlord said he deemed the rental unit abandoned sometime in January 2019, and regained possession at that time.

The landlord testified that he attempted to contact the tenant and that sometime in December 2018, he posted a 10 Day Notice to end the tenancy due to unpaid rent.

The landlord agreed that there were some tools in the rental unit, but did not agree to the furniture claim, as it was a furnished rental unit.

The landlord also agreed that he did not collect the interact rent payment made by the tenant for the balance of November and for December 2018.

The landlord confirmed that he did not make an inventory list prior to disposing of the tenant's personal possessions.

Tenant's rebuttal-

The tenant's advocate submitted that the rental unit was not entirely furnished, and that the items claimed for were actually owned by the tenant, such as the couch and tables.

Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenant has the burden of proof to substantiate his claim on a balance of probabilities.

The undisputed evidence is that the landlord deemed the rental unit abandoned, disposed of the tenant's personal property and failed to make an inventory of those items.

Section 24 of the Residential Tenancy Regulations ("Regulations") states as follows:

- 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.*

I find the evidence shows that the tenant attempted to pay the landlord rent for the balance of November and for all of December 2018, in the usual manner, by interact; however, the landlord has not collected this rent payment. I therefore do not find that the tenant vacated the rental unit at the end of the tenancy or has left his personal property for which he did not pay rent, as it was the landlord's choice not to collect the December 2018, rent. I find it clear that under the circumstances, the tenant could reasonably be expected to return to the rental property.

Section 25 of the Regulations provides the following:

Landlord's obligations

25 (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.*

Even if I were to accept the landlord had correctly established that the tenant had abandoned his personal property, I find that the landlord has breached his obligation under the Regulations by failing to store the tenant's personal property in a safe place and manner and to keep an inventory of the property. I therefore find the tenant is entitled to compensation for the value of his personal property.

As the landlord failed to provide an inventory of the tenant's personal possessions or any confirmation to establish the rental unit had been furnished, I accept the undisputed inventory of the tenant. In reviewing the inventory provided by the tenant, I find his claim for each of the items to be reasonable. For instance, his claim for an XBOX and games controllers was \$75.00 and for a bike was \$400.00. The tenant also did not claim for the value of his passport, birth certificate, yearbook and tax documents, which was undisputed by the landlord that he disposed of these items.

Additionally, the total amount listed for the value of the personal property was \$6,030.00, yet he reduced this amount in his monetary claim to satisfy the unpaid rent for part of November and all of December 2018. I find these gestures to be reasonable on the tenant's part, in light of the landlord's violations of his obligations in this tenancy.

As I have found that the tenant is entitled to compensation for the value of his personal property and that the tenant's claim was reasonable, I find he is entitled to a monetary award of \$4,500.00 as claimed.

I also grant the tenant recovery of his filing fee of \$100.00 paid for his application, pursuant to section 72(1) of the Act.

Due to the above, I find the tenant is entitled to a total monetary award of \$4,600.00, comprised of compensation for the loss of his personal property of \$4,500.00 and recovery of the filing fee of \$100.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4,600.00, which is attached to the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord and, if necessary, it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

I further find that I would have granted the tenant the entire value of his personal property listed on his inventory, if not for the fact he reduced it to account for unpaid rent. I find it necessary, under section 62 of the Act, to make a determination as to any issue which may arise from this tenancy dealing with unpaid rent for the time period in question, or November, 2018 through January, 2019.

I therefore find that the tenant has paid rent through the end of this tenancy, which occurred at an unknown time in or before mid-January 2019, when the landlord took possession of the rental unit. As a result of this finding, the landlord may not make his own application for dispute resolution seeking unpaid rent for the time period in question, or November, 2018 through January, 2019.

Conclusion

The tenant's application for monetary compensation is granted and he has been granted a monetary order for \$4,600.00.

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: May 22, 2019

Residential Tenancy Branch