



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA Kamloops
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, MNSD, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of personal property - Section 65;
2. An Order for the return of the security deposit - Section 38; and
3. A Monetary Order for compensation - Section 67.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing the Tenant expressed frustration with compiling and presenting evidence noting that she has challenges due to a brain injury. The Tenant states that it did its best but was unable to obtain an advocate and wishes to proceed despite difficulties. The Tenant twice declined an adjournment to obtain assistance from a mental health worker or an advocate.

Issue(s) to be Decided

Has the Landlord received the Tenant’s forwarding address?

Is the Tenant entitled to the return of personal property?

Is the Tenant entitled to compensation for a loss of personal property?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 25, 2018 and ended on March 20, 2019. At the outset of the tenancy the Landlord collected \$200.00 as a security deposit.

The Tenant states that she provided her forwarding address to the Landlord in text sometime in March 2019. The Tenant did not provide a copy of the text. The Tenant states that the Tenant was picking up its mail at the Landlord's property and that the Landlord was aware of this, so the Landlord had a forwarding address. The Landlord states that no forwarding address was received from the Tenant. The Landlord states that in an email the Landlord asked the Tenant to provide this address however the Tenant did not provide it in its reply. The Tenant states that the Landlord has the forwarding address as set out in the application for dispute resolution.

The Tenant submits that it moved out of the unit in compliance with the Landlord's order of possession that was effective two days after it was served on the Tenant. The Tenant states that it left personal property at the unit and that not all of the property was returned to the Tenant. The Tenant provides a list of areas of the rental unit containing items that were not returned. The Tenant provides a global estimate for the items in each of these areas based on replacement values, some of which were determined based on the Tenant's recall of what was paid for the items. The total amount claimed for these areas is \$21,000.00. The Tenant states that antiques left in the locker were very old, one of a kind and could not be replaced. The Tenant states that it was unable to obtain estimates for these antiques as it was too emotional for the Tenant. The Tenant states that the missing queen size mattress and box spring with a memory foam, mattress cover, quilt and sheets, a sofa bed, a chair, bed linens and two carpets were new at the onset of the tenancy. The Tenant provides a separate estimate sheet for bath and bedding items as well as the two carpets. The Tenant states that the replacement costs for the mattress and box spring are estimated at \$1,100.00 and that

the replacement cost for the sofa bed that was used but in pristine condition is estimated at \$2,500.00.

The Landlord states that in March 2019 the Tenant was informed that its personal property would be placed in storage. The Landlord states that on October 12, 2019 the Landlord returned all of the tenant's belongings except for the bed and the sofa bed. The Landlord states that the Tenant left the unit unlocked at move-out with all the keys inside. The Landlord states that no written inventory was made of the property that the Landlord removed and stored from the unit. The Landlord states that photos were taken of everything left in the unit. It is noted that no photos of the property in the unit were provided as evidence. The Landlord states that contents of boxes were described on the boxes in either general terms, i.e., electronics or in detail however no master copy of those contents was retained. The Landlord states that as the moving company would not take the sofa and bed due to a policy related to bed bugs these items were taken to the dump in April 2019. The Landlord states that it did not inform the Tenant that its bed and sofa would be thrown out. The Landlord states that it is not sure where any missing items are. The Landlord agrees that the Tenant is entitled to compensation for the bed and sofa bed but disputes the remaining of the Tenant's claimed items. The Landlord estimates that the replacement range cost for the bed would be between \$900.00 and \$1,000.00 and for the sofa bed \$600.00 and \$800.00.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Given the lack of a copy of a texted forwarding address and considering the Landlord's evidence that no such text was received by the Landlord I find on a balance of probabilities that the Tenant has not substantiated that the Landlord received the Tenant's forwarding address by text. As the Tenant only informed the Landlord that its mail will be collected at the Landlord's property, I find that

the Tenant did not provide its forwarding address in writing for the return of the security deposit. However, as the Tenant has confirmed at the hearing that its forwarding address is as noted in the Tenant's application, I find that the Landlord has now received the forwarding address. The Landlord was informed at the hearing that it has 15 days from the date of the hearing to deal with the security deposit. Should the Landlord not deal with the security deposit as required under the Act the Tenant has leave to reapply for its return.

Section 30 of the Regulations provides that when dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage. The Tenant provided no oral evidence that the property that the Landlord removed from the unit was damaged and the Tenant's submissions are not clear on damaged items. As a result, I find on a balance of probabilities that the Tenant has not provided sufficient evidence of damage to the items stored or packed by the Landlord.

Section 25(1) of the Regulations sets out the landlord's obligations in relation to storing tenant's personal property and provides that the landlord must, inter alia, keep a written inventory of the property, and 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. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the Landlord's evidence that the Tenant was not informed of the planned destruction of the Tenant's bed and sofa bed I find that the Landlord breached this part of the regulations. Given the Landlord's evidence that it destroyed this property before the Tenant could collect it, I find that the Tenant has substantiated its claim to compensation for these items. Accepting the Tenant's undisputed evidence that the mattress was new at the onset of the tenancy and considering that the Landlord gave

an upper estimate of the replacement cost for this bed to be \$1,000.00 while the Tenant gave an estimate of \$1,100.00 for the replacement cost, I find that the Tenant has substantiated reasonable compensation of **\$1,050.00**. Given the Landlord's estimate of the upper cost of \$800.00 to replace the sofa bed and considering the Tenant's undisputed evidence of the sofa bed having been used but in pristine condition, I find that the Tenant has substantiated a reasonable replacement cost of **\$800.00**. As the Landlord did not dispute that the Tenant also lost bedding associated with the bed and considering the Tenant's description of that bedding, I consider that a reasonable replacement cost for the memory foam, mattress cover, quilt and sheets to be **\$600.00** for a total compensation of **\$2,450.00**.

Although I accept that other items may have been missing from among the items stored by the Landlord, given the Landlord's undisputed evidence that the Tenant left the unit unlocked at the end of the tenancy with all the keys, including presuming the locker keys, I find on a balance of probability that the Tenant has not substantiated that the Landlord caused the loss of any other personal property left in the unit by the Tenant and I dismiss the remaining compensation amount claimed by the Tenant. Based on the evidence that the Tenant collected its personal property stored by the Landlord other than the bed and sofa bed, I find that the Tenant is not entitled to an order for the return of any other property and I dismiss the claim for return of personal property.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,450.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 10, 2020

Residential Tenancy Branch