



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he e-mailed the landlord with his application for dispute resolution on April 30, 2020 and mailed the landlord a copy on May 1, 2020. The landlord testified that he received the tenant's application but could not recall by which method. I find that the landlord was served in accordance with the *Act* and the March 30, 2020 Director's Order.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and ended on March 30, 2020. Monthly rent in the amount of \$1,500.00 plus a \$50.00 per month parking fee were payable on the first day of each month. A written tenancy agreement was submitted for this application.

Both parties agree that at the time the tenant moved out of the subject rental building the freight elevator was not working and the tenant's sofa was too large to fit in the regular elevators or the stair well. The subject rental property was on the 26th floor.

The following email exchanges between the landlord and the tenant were entered into evidence:

- March 26, 2020, landlord to tenant:
 - No chance on the elevator [tenant]. Simply no possible. Long story. Unfortunate story. It is out of service for quite a while...a lot of required repairs in progress. [The manager] will talk to you and see what we can figure out.
- March 30, 2020, tenant to landlord:
 - I spoke to [the manager] at key exchange and we agreed I would leave the couch in the apartment...he will help with one of the following for me:
 1. Sell to the new tenant
 2. If new tenant doesn't want; [the manager] will place the couch in your building storage. To which we sell [online]
 - Unfortunately I've moved out of Province to Alberta- hence the difficulty of the situation...If I was local I would've arranged to pick up.
- March 31, 2020, landlord to tenant:
 - Ok, thanks
- April 29, 2020, tenant to landlord:
 - I spoke to you last week, also [P.]; you said the elevator was still down. Please let me know when I can pick up my couch. Per below.
- April 30, 2020, landlord to tenant:
 - [Tenant], the sofa was removed by being broken into 3 pieces. It is onsite, but to my understanding it is no longer usable.

The tenant testified that he purchased the sofa for the subject rental property and that it was brand new when he moved into the subject rental property. The tenant testified that he entered into evidence an estimate for a similar couch from the same store he purchased the sofa from. The estimate is for \$1,198.00 and states that it includes taxes.

The tenant testified that he is seeking \$1,327.46 for the cost of the sofa destroyed by the landlord. The tenant testified that he is seeking an amount greater than the estimate because the taxes on the estimate were not correct. The tenant did not testify as to how or why the taxes on the estimate were incorrect or provide the correct calculations. The tenant entered into evidence photographs of the sofa that was destroyed, it looks similar to the sofa in the estimate.

The landlord testified that he is not liable for the cost of a new sofa because the tenant abandoned it at the subject rental property and because the re-sale value of the couch would have been significantly less than the amount claimed by the tenant. The landlord testified that the elevator was down for six to eight weeks in total. The landlord testified that he did not have an agreement with the tenant about the sofa in writing and that the manager who the tenant dealt with is dead.

The landlord testified that he believed the sofa was three years old but could not point to any evidence to support this claim.

Analysis

Section 24 of the *Act* states:

- 24** (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.

I find that the tenant and the manager had an express agreement that the manager would store the sofa until it was sold by the manager. While this agreement was not in writing, its terms were stated in the March 30, 2020 email which the landlord responded “ok” to on March 31, 2020. I find that this agreement is enforceable. I find that the manager was an agent of the landlord and acted on the landlord’s behalf. I find that the landlord breached the storage agreement when the landlord cut the sofa into pieces.

Section 30 of the *Regulation* states:

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.

I find that the landlord breached section 30 of the *Regulation* when the landlord cut the sofa into pieces.

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* states that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement,

the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the tenant's testimony that the sofa in question was seven months old at the end of this tenancy. Based on the tenant's testimony and the photographs entered into evidence, I find that the tenant's couch was similar in nature and size to the sofa estimate entered into evidence. I find that the tenant has not proved the value of the sofa over and above the estimate entered into evidence in the amount of \$1,198.99.

Policy Guideline #40 states that the useful life for furniture is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 113 months of useful life that should have been left for the sofa. I find that since the sofa was destroyed after only seven months, the landlord is required to pay according to the following calculations:

$\$1,198.99 \text{ (cost of new sofa)} / 120 \text{ months (useful life of sofa)} = \$9.99 \text{ (monthly cost)}$

$\$9.99 \text{ (monthly cost)} * 113 \text{ months (expected useful life of sofa)} = \$1,128.87$

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,228.87.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: August 31, 2020

Residential Tenancy Branch