



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wendeb Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. Both parties confirmed under affirmation that they were not recording the hearing in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

Preliminary and Procedural Matters

At the outset of the hearing the tenants stated that they are also seeking monetary compensation for the loss of their belongings. The tenants were informed that they cannot amend their claim through evidence. The landlord's agent stated that they are prepared to deal with the tenants claim for loss of belonging in order to resolve this issue today. Therefore, I will allow the tenants to amend their claim to add a claim for monetary loss; however, they are restricted to the demand letter they provided in their evidence.

Issues to be Decided

Should the landlord be ordered to comply with the Act?
Are the tenants entitled to monetary compensation for loss?

Background and Evidence

The tenancy began on April 1, 2019. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenants.

The tenants testified that on April 15, 2021, they discovered that the contents of their storage locker was missing and that the lock had been cut off. The tenants stated they contacted the building manager because they thought someone had broken into their locker; however, they were informed that the items had been removed and disposed of because they were unsanitary.

The tenants testified that the landlord is in breach of the Act when they failed to give them written notice of a date and time they would be accessing the storage locker. The tenants stated that the landlord has also failed to comply with the abandonment provisions of the Act when they failed to store the items for at least 60 days.

The tenants testified when they got the locker at the start of the tenancy they knew that it could be impacted by leaking water; however, due to this they kept everything in plastic bags for protection. The tenants stated that the landlord knew it was their storage locker and should have contacted them directly.

The tenants testified that they seek compensation for their loss in the amount of \$607.98. The tenants stated that there was one patio chair in the storage locker that is part of a set that they have on their patio. The tenants stated they cannot just replace the chair, so they seek to recover the full value of the patio set in the amount of \$398.00. The tenants stated that there was a pre-lit christmas tree valued at the amount of \$69.98; various christmas decorations valued at \$50.00; a shoe rack valued at \$25.00; some extra patio tiles valued at \$15.00; and two tiki torches valued at \$15.00 each. The tenant stated they also want to recover the cost of the broken lock valued at \$20.00.

The landlord's agent testified that the fire department attended the property in February 2021, and due to the fire department concerns they had to address these issues. The agent stated at this time they also discovered that there were multiple leaks in the plumbing stack causing items to be contaminated.

The landlord's agent testified that because one of their digital files on their computer was corrupt they could not access it, and they were unable to determine who was assigned locker 34 and 40. The landlord's agent stated they did what was reasonable to attempt to find the owner of the affected lockers.

The landlord's agent stated that on March 5, 2021 they posted a notice in the elevator, and at the exit doors. The agent stated that the notice informed the tenants of storage locker 34 and 40 that the items in storage would be disposed of on March 12, 2021; however, that was delayed to March 16, 2021. The March 5, 2021 notice reads,

By order of the New Westminster Fire Department

On Friday, March 12th, 2021 the locker room hallways will be cleared of all items – which will then be disposed of. In future any items found in the locker room hallways will be immediately removed and disposed of.

Additionally, lockers 34 & 40 will be opened and emptied. These items will also be disposed of.

The landlord's agent testified because the tenants did not come forward they had no option but to access the storage unit and remove the items from the storage locker. The agent stated that there were multiple leaks in the plumbing stack that went into storage locker 40, and were soiled, damp and covered in mildew and had to be disposed of. The agent stated that they salvaged everything they could and stored those items in another safe area.

The landlord's agent testified that the tenant's items were not all stored in plastic bags as claimed.

The tenants acknowledged that they saw the notice posted; however, they did not fully read the notice and did not think that applied to them. The tenants stated that the landlord should have made more of an effort to contact them and should have taken pictures.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants are quoting the abandonment provision of the Act; however, that section of the Act does not apply as the tenant has not vacated the premise.

I accept the evidence of the landlord's agent that there were multiple leaks in the plumbing that were had affected storage unit 34 and 40 and that they were unable to determine who the owner of the storage locker was because of a corrupted file on their computer. The landlord posted signage on March 5, 2021, informing the owner of locker 34 and 40 that the items will be removed and disposed of on March 12, 2021. The tenants acknowledged that signage was posted; however, did not fully read it. I find that unreasonable as the letter was clearly written, was very short, which takes no effort to read in its entirety.

In this case, I find the landlord made reasonable efforts to find the owner of storage locker 40. Had the tenants read the posted notice, which they acknowledged they saw, they could have contacted the landlord before the date the landlord indicated in the notice. I do not find the landlord has violated any provisions of the Act as the tenant were given sufficient notice on March 5, 2021 that the storage unit would be accessed on March 12, 2021, which was further delay to March 16, 2021.

Further, the tenants are claiming a loss for some of the items that were disposed of; however, these items were affected by a leaking plumbing stack. I find it was reasonable for the landlord to dispose of these items especially when the tenants had the opportunity to deal with this matter and failed to mitigate when they failed read the notice, which they acknowledged they had seen.

While I accept the tenants may have lost some items, I do not accept the value they presented. As an example, the tenants would not be entitled to a new patio set, as they did not loss the entire set, it was only one chair which was not in use.

If the tenants truly suffered a loss they should be contacting their insurance as it is the tenant's responsibility to have tenant insurance as it would cover such damage to their personal belongings.

Based on the above, I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: September 02, 2021