



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

This hearing dealt with a tenant's application for return of personal property and a Monetary Order for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing. The applicant had a witness present at the outset of the hearing. The witness was excluded with instruction to wait to be called.

The tenant of the subject rental unit died on August 31, 2020. The deceased tenant's brother (herein referred to by initials GK) previously filed an Application for Dispute Resolution and on August 9, 2021 that application was dismissed, with leave, as the Arbitrator was unsatisfied that GK had legal authority to represent the deceased's estate (file number referenced on the cover page of this decision). On July 5, 2022 GK was approved by the court to administer the estate of the deceased tenant. Upon review of the estate grant, I am satisfied that GK had authority to make this Application for Dispute Resolution on behalf of the estate when it was filed on July 6, 2022. However, in filing this Application for Dispute Resolution, GK identified himself as the tenant, which is not correct. With consent of both parties, the style of cause was amended to correctly identify the applicant as being the representative of the estate in keeping with Residential Tenancy Policy Guideline 43: *Naming parties*. The name of the respondent landlord was also amended, with consent, to use the landlord's correct and legal name.

I explored service of hearing materials upon each other. GK testified that he served the proceeding package and all of the evidence to the landlord, in person, in late July 2022. I noted that the evidence package provided to the Residential Tenancy Branch was 189 pages, although the pages were not numbered or indexed.

The landlord confirmed receiving a package from GK but stated the package he received was not as large as 189 pages. I instructed the landlord to count the number of pages he received, which he did, and the landlord stated he counted 49 or 50 pages.

Despite not receiving all of the evidence, the landlord indicated he wished to proceed as he had prepared for this hearing. The landlord also pointed out that he had also received evidence from GK for the previous dispute resolution proceeding. In recognition that the landlord may not have all of the evidence that is before me, I indicated that the relevant documents would be described during the hearing so that the landlord may adequately respond to them.

As for the landlord's hearing materials, the landlord testified that they were served to GK by a process server on October 28, 2022. GK confirmed that to be accurate.

Issue(s) to be Decided

1. Is it necessary to issue an order for the landlord to return personal property?
2. Has the applicant established an entitlement to monetary compensation from the landlord, as claimed?

Background and Evidence

The deceased tenant had been occupying a basement suite at the residential property since 2015 while the landlord and his wife resided in the main unit of the house. The tenant was found very close to death by the landlord and the tenant's friend (referred to by initials SP) in the rental unit. An ambulance was called and the tenant was taken to hospital where he died a short time later. The death certificate reflects a date of death of August 31, 2020.

Return of personal property

GK asserted that the landlord stole all of the tenant's property around the time of his death except for a few personal items GK picked up from the residential property in November 2021. While GK was at the property to retrieve the few possessions that had belonged to his brother he noticed a TV stand, four mounted tires and a carpet cleaner in a shed that GK submits belonged to his brother. GK indicated that he wanted to have these items when he filed this Application for Dispute Resolution.

The landlord responded that these items did not belong to the tenant. Rather, the TV stand was purchased by the landlord approximately 12 years ago and it was moved outside when he purchased a new TV stand approximately 4 years ago. The landlord stated the old TV stand has been sitting outside under a tarp and although it is destined for the dump it has not yet been disposed of because it is too heavy to move.

The landlord stated the four tires belong to his company and did not belong to the tenant. The landlord pointed out that the tenant had not even driven in the last years of his tenancy.

As for the carpet cleaner, the landlord testified that it belongs to him but that it was stored in the shed because it does not work well.

Since the landlord was going to dispose of the TV stand and carpet cleaner anyways, the landlord offered these items to GK to pick up if he wants them. GK declined the offer, stating they are junk.

Monetary compensation

In filing the Application for Dispute Resolution seeking compensation of \$35000.00, GK merely described the basis of the claim as “see attached list”. During the hearing, I confirmed with GK that he is referring to a listing of personal property that was included in the materials. GK also confirmed that he valued the items on the list of exceeding \$35000.00.

The landlord stated he did not have such a listing in the materials he was served in July 2022; however, after I described the listing the landlord stated he was familiar with the list as it had been served upon him for the previous dispute resolution proceeding.

Below, I have reproduced the list:

- 4 MOUNTED SNOW TIRES, SEEN BEHIND HOUSE
- Heavy duty adjusting wooden shelves *BISSELL CARPET CLEANER SEEN BEHIND HOUSE*
- Samsung 50" smart TV and stand *SEEN BEHIND HOUSE*
- Freezer
- Computer & laptop
- Kitchen Aid food processor & mixer
- Stainless steel pots and pans
- Frying pans, kitchen utensils
- Electric salami cutter, carving knives, etc, all top quality
- Stereo components & speakers, all top quality
- Turn table
- Sony portable radio
- Heater
- Record collection, 60s & 70s, all in mint condition, some records worth thousands
- VHS, CDs, many boxes were unpacked that were stolen
- Lamps, Weber BBQ worth \$1000, convection microwave
- Sony reel to reel tape recorder
- Silverware dining set, china collection, cups & saucers
- *TOOL BOX FULL OF TOOLS*

GK stated that his cousin, and witness, will corroborate the tenant had the above described items.

Included in the tenant's materials was a letter signed by the tenant's cousin and witness on January 25, 2021. The letter indicates that the author had helped the tenant move, shop and go to medical appointments. The letter also provides for essentially the same items seen in GK's listing above.

I noted that there were no individual amounts listed next to each item and I asked GK how he arrived at a value of \$35000.00. GK stated he valued these items based on their market value at the time of death and although he determined the total value to exceed \$35000.00 he limited the claim to my jurisdictional maximum of \$35000.00.

I noted that many of the items appeared to be used household items and likely of little value. I asked GK if there were items within this list that were of greater value. GK testified that within the tenant's record collection was one album worth \$30000.00. GK could not recall the name of the album but claims he searched on eBay and found the same album for sale for \$30000.00. I noted I was not in receipt of a print-out from eBay and GK confirmed he had not included it. I enquired with GK if his brother carried special insurance on the album to which GK stated his brother did not.

The landlord submitted that when the tenant died, the Public Guardian & Trustee (PGT) was contacted. A PGT referral form was completed by the tenant's friend SP. The landlord submitted that SP was the only person he ever saw visit the tenant.

On the PGT referral form, SP identified all assets as being in the rental unit and the rental unit was in "a terrible mess" and "bed bugs everywhere". On the referral form, SP listed GK as being the tenant's brother and SP as being the tenant's friend.

The landlord was informed that the tenant's brother did not want to deal with the tenant's estate. The landlord had most of the tenant's belongings hauled away to the dump in November 2020 as the landlord was of the view the items were of no value since they were filthy and contaminated with bed bugs, with the exception of a few items the landlord set aside and GK retrieved in November 2021. The landlord submitted that it was he who suffered financially due the circumstances. The landlord stated he lost months of rent after the tenant died and the landlord had to pay to have the tenant's possessions removed and the landlord incurred costs to clean and remediate the rental unit.

On February 16, 2021 the PGT wrote a letter to the landlord, stating [name of tenant omitted by me for privacy purposes]:

On September 4, 2020, a referral was made to our office requesting us to consider administering the estate of

The Public Guardian and Trustee of British Columbia sometimes administers estates of deceased persons in British Columbia where an executor, family member or other eligible estate administrator, is unable, or unwilling, to carry out the administration of the estate.

We completed our initial assessment of this estate on September 14, 2020. Given the value of the assets we have identified, our involvement as an administrator of this estate is not warranted and would only serve to dissipate the estate as we charge a minimum capital commission of \$3,500, plus taxes.

Given that there was still a need for funeral arrangements to be made, the Public Guardian and Trustee made a referral to the Ministry of Social Development and Poverty Reduction's Burials Program on September 14, 2020. If you have further questions about these arrangements, please contact them directly by phone at 1-866-866-0800. Please be aware that the Ministry may have made a claim against the assets of the estate to recover all or part of the expenses of the incurred funeral services. Please also note that under section 5(1)(j) of the *Cremation, Internment and Funeral Services Act* the Ministry has final authority to decide on what type of arrangements would occur.

A family member was identified who had informed our office on September 9, 2020 that they did not wish to take responsibility for making funeral arrangements or administering the estate.

Thank you for your assistance in our assessment of this estate. We have closed our file.

Included in the landlord's evidence was a letter signed by the tenant's friend SP on February 26, 2021 describing the rental unit as being in [dis]array, extremely dirty, contaminated with bed bugs and bed bug eggs, and smelled terribly. SP described being a friend of the tenant's since childhood and a strained relationship between the tenant and GK. SP also wrote that the tenant was of little financial means and SP gave him money to pay rent at times and the landlord would give the tenant meals, especially after his health declined.

Also included in the landlord's evidence was a note purportedly written by a friend of the landlord who helped the landlord haul the tenant's possessions to the dump on November 19, 2020. The letter describes the rental unit as being full of garbage and a "mess".

I asked GK when the last time he had been to the rental unit while his brother was alive to which GK stated he had never been to the rental unit but that he and his brother had only spoken on the phone. I asked GK if he knew of SP or had contacted SP about the missing items. GK indicated he had not tried to contact SP. GK described SP as being

his brother's "gay lover" who stole \$100,000 from his parents and that the tenant and SP were "no angels".

In the landlord's submission it was noted that GK had sworn an affidavit for the court that the tenant's personal property had no value when GK applied for the estate grant.

Below, is a portion of the Statement of Assets, Liabilities and Distribution that was sworn to be accurate by GK in applying for the estate grant on April 4, 2022:

| | | |
|---|--|------------------------------|
| Part I Real Property within British Columbia (including mortgages and vendors' and purchasers' interests in agreements for sale) | | (B04) 91-1 Value at Death |
| <i>List item details and then list secured debt details below those items</i> | | |
| NONE | | |
| TOTAL REAL PROPERTY WITHIN BRITISH COLUMBIA | | |
| Part II Tangible Personal Property within British Columbia (including vehicles, furniture and other physical items) | | Value at Death |
| <i>List item details and then list secured debt details below those items</i> | | |
| Various personal belongings - NO SIGNIFICANT VALUE | | 0.00 |
| TOTAL TANGIBLE PERSONAL PROPERTY WITHIN BRITISH COLUMBIA | | |
| Part III Intangible Personal Property within British Columbia that is not dealt with by the foreign grant (including bank accounts, intellectual property and other valuable items that cannot be touched by hand) | | Value at Death |
| <i>List item details and then list secured debt details below those items</i> | | |
| NONE | | |
| TOTAL INTANGIBLE PERSONAL PROPERTY | | |
| GROSS VALUE OF ASSETS LESS SECURED DEBTS | | \$0.00 |

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

As the applicant, GK has the burden of proof in this case. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Return of Personal Property

Although the landlord offered to give GK the TV stand and carpet cleaner during the hearing, GK decline the offer.

With respect to the tires, I find the disputed oral testimony as to ownership of the tires is insufficient to satisfy me that the tires were those of the deceased tenant.

In light of the above, I dismiss the request for an order for return of personal property.

Monetary compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider all of the following:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

GK alleges the landlord to be in breach of the Act and regulations by either stealing the tenant's personal possessions or disposing of them contrary to the abandoned property rules.

GK submitted that the landlord was required to store the items for 60 days and advertise impending disposition in the newspaper before disposing of the items. The landlord acknowledged disposing of most of the tenant's personal possessions in November 2020 as reflected in the receipts for movers and dump fees that were provided by the landlord. At issue is whether the landlord improperly disposed of the tenant's possessions.

In this case, the landlord and the tenant's friend SP found the tenant in the rental unit near death. An ambulance was called and the tenant died shortly afterward on August 31, 2020. The landlord and SP contacted the PGT shortly after that and on September 4, 2020 a referral form was completed and submitted to the PGT. To me, these actions demonstrate reasonable efforts to provide aid to the tenant while he was still alive and to have his estate administered after his death.

In the meantime, the tenant's possessions remained in the unit and given the tenant's death, no rent payments, no family member or the PGT stepping forward to take control of the tenant's possessions, I find it reasonable that the landlord considered the tenant's possessions to be abandoned property.

As for how a landlord must deal with a tenant's abandoned property, section 25 of the Residential Tenancy regulations provides as follows:

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.**

(3)A court may, on application, determine the value of the property for the purposes of subsection (2).

[My emphasis in bold]

Although GK put forth that his brother's assets had a market value of over \$35000.00 at the time of death, GK did not provide evidence to corroborate the value, especially the one asset (the record album) that had a value of \$30000.00 alone. In contrast, I find there is preponderance of evidence that the tenant's assets were unsanitary and had little to no value at the time of death based on:

- The declared value of personal property of the tenant being of "no significant value" at the time of death in the Statement of Assets filed in the Supreme court by GK.
- The letter from the PGT declining to administer the estate given the value of the assets and the PGT's minimum charge \$3500.00 to administer an estate.;
- The PGT referral form describing the rental unit as being in [dis]array and dirty;
- The landlord's description of the rental unit and the possessions in the rental unit at the time of death being filthy and covered in bed bugs;
- The letter of the tenant's friend SP who also described the tenant's possessions as being dirty and covered in bed bugs and bed bug eggs and smelling terribly;
- The note from the landlord's friend who described the rental unit as being full of garbage on November 19, 2020;

Given the above, I find, on a balance of probabilities, that the landlord had the right to dispose of the tenant's possessions under section 25(2) of the Regulations as the possessions were both unsanitary and had a cumulative value of less than \$500.00. Therefore, I find GK failed to meet his burden of proof that the landlord breached the Act or the Regulations or that a breach resulted in a loss of \$35000.00.

In keeping with the findings and reasons above, I dismiss the Application for Dispute Resolution in its entirety, without leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed in its entirety, 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: December 14, 2022

Residential Tenancy Branch