



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

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

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order for the Landlord to return the tenant’s personal property – Section 65.

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

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to return of their personal property?

Background and Evidence

The tenancy started on June 1, 2012. Rent of \$750.00 is payable monthly.

The Tenant states that after being away from the unit for a few days, she returned on January 18, 2013 to find all of her belongings from inside the unit gone except for a bed frame, couch, dresser and a box spring that was left on the porch. The Tenant states that the Landlord was painting the interior of the unit and told her that he threw everything out. The Tenant states that she did not return to retrieve the remaining belongings. Each Tenant provided a list of items that were removed from the unit and states that this list only sets out half the personal property. One Tenant estimates that

her belongings were worth approximately \$10,000.00 and included such items as photos of her grandson that are not replaceable and are invaluable. The second Tenant states that he is a carpenter and had went away to a work camp on November 1, 2012 and returned on January 16, 2013. This Tenant's list of belongings included a significant number of tools and fishing gear that were left in the unit and were not needed while he was away at the camp. This Tenant states that all his personal belongings were inside the unit except for the boat, travel trailer and car trailer. The Tenant states that both trailers are also gone. The Tenants state that they also seek compensation for the Landlord's actions in removing them and their belongings without notice or right and for leaving them homeless and without clothing.

The Landlord states that the Tenants have not paid any rent since September 2013 and that that they have been to speak to the Tenant directly since then. The Landlord states that there was no power to the unit on January 11, 2013 and that the Landlord believed that the Tenants had abandoned the unit. The Landlord states that there were no belongings in the unit other than the box spring, mattress, couch and garbage. The Landlord states that everything left in the unit was removed with a labour cost of \$1,050.00 and taken to the garbage with \$585.10 spent on dump fees.

The Agent states that prior to the removal of the Tenant's belongings by the Landlord, he had attended the unit on January 13, 2012 and saw that almost everything was gone and that the door was wide open. The Agent states that the power was not in the Tenant's name but in the Agent's name since October 2012. When questioned about how the Tenant could disconnect a utility that was not in their name, the Agent stated that maybe the power was on or off and that maybe all was not garbage. The Tenants state that power was connected in January 2013.

It is noted that in its written submissions the Landlord indicates that the Tenant was spoken with in October 2012 and that the Tenant informed the Landlord that the Tenant was attempting to obtain social assistance. The Landlord submits that in December 2012 the Tenant's friend was in the unit and that this person agreed to let the Tenant

know to call the Landlord. The Landlord submits that no calls were received from the Tenant and that on January 11, 2013 the Landlord asked the person living in the travel trailer on the property whether he could contact the Tenant. The Landlord submits that this person told the Landlord he knew how to contact the Tenant so the Landlord asked this person to call the Tenant and tell her that her belongings would be removed the next day. The Landlord submits that on January 12, 2013 all the Tenant's belongings were gone except for a box spring and mattress, a couch and all the garbage. Contained within these submissions is also a note dated December 7, 2012 to the Tenant indicating that if the Tenant did not vacate the property within 48 hours, the belongings would be removed onto the street.

The Landlord states that the night before the unit was emptied by the Landlord he spoke directly to the Tenant and informed her that "things were going". The Landlord states that when he spoke with the Tenant on this occasion, the Tenant has said she was away for a while but the Landlord believed that the Tenant had moved out because there was nothing in the unit. The Landlord states that he did not ask the Tenant if she had moved out and that the Tenant did not say that she moved out.

The Landlord states that in early January 2013, the police called the Landlord to ask if the property was vacant because the door was wide open and people were going between the neighbouring house and the unit. The Landlord states that the police also called them about the same thing in October 2012. The Tenants state that they do not believe that the police attended the unit in January 2013 but agree this did occur in October 2012.

The Landlord states that he boat is believed by the Landlord to be still at the unit.

Analysis

Section 24 of the Residential Tenancy Regulation provides as follows in relation to abandonment:

- (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.

Given the inconsistencies in the Landlord's evidence in relation to contact with the Tenant but noting that the Landlord stated at the Hearing that the Tenant was spoken with prior to the Landlord's removal of the Tenant's belongings, I find on a balance of probabilities that the Landlord was in contact with the Tenant prior to deciding the unit was abandoned and did not have a reasonable basis to consider the unit abandoned. Even if the Landlord did consider the unit abandoned, the Landlord is still required to meet the requirements of the Act in relation to articles left behind.

Section 25 of the Regulation provides the following in relation to the obligations of a Landlord following the abandonment of a unit:

(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.

Considering that the Landlord provided no photos of the unit showing what was in the unit before the Landlord removed things and considering the amount that the Landlord states was spent on labour to remove articles from the unit and the dump fee bill to dispose of those items, I find that the Landlord removed a substantial amount of items from the unit to the dump. I also find that this evidence tends to support the Tenants' evidence that their belongings as claimed were in the unit and removed by the Landlord.

Overall therefore, I prefer the Tenants' evidence and accept that their personal belongings as claimed were in the unit until removed by the Landlord. Although the Landlord has suggested that what may have been in the unit was emptied by neighbors or others due to the unit being unlocked, I note that the Landlord has not provided any supporting evidence of this other than their oral evidence of the police contact. I also note the Landlord's own evidence of intention to place the Tenant's belongings on the street in December 2013. I find that this is highly indicative of the Landlord's actions in January 2013 to remove the Tenant's belongings from the unit. I therefore find that the Tenants have substantiated on a balance of probabilities that the unit was not

abandoned and that the Landlord disposed of their personal belongings that were of greater value than \$500.00.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the above finding that the Landlord did not comply with the Regulation in relation to the disposal of the Tenant's goods and the finding that the unit was not abandoned, I find that the Tenants must be compensated for the loss of their belongings. It is not certain whether the boat is still at the unit and if it is, the Landlord is ordered to secure the boat until the Tenants are able to retrieve the boat. If the Tenants are unable to retrieve this boat because it is no longer there, I give the Tenants leave to reapply for compensation in relation to this item. I provide compensation for the remaining items claimed by the Tenants and include compensation for the loss of the items on the porch which can be reasonably found to have been damaged while left on the porch during the rainy season. In coming to a determination on the amount of compensation, I note that the Tenant did not place a value on each item claimed but only provided an overall estimate. It is also not clear whether the estimate reflects the replacement value or the actual value of the items. Given this lack of certainty, and considering that compensation can only be provided for actual losses, I provide a reduced amount of compensation of **\$7,500.00** for the Tenants' losses.

Conclusion

I order the Landlord to return the Tenants' boat to the Tenants.

I grant the Tenants an order under Section 67 of the Act for **\$7,500.00**. 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 *Residential Tenancy Act*.

Dated: June 21, 2013

Residential Tenancy Branch