



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications by both the tenant and the landlord. The tenant applied for a monetary order for money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement, and to recover his RTB filing fee. The landlord applied for a monetary order for damage to the unit and for money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement; to keep the security deposit; and to recover his RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement?

Is the landlord entitled to a monetary order for damage to the unit and for money owed or compensation for loss or damage under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree the tenancy started in 2005 and the tenant paid a security deposit of \$300.00 when he moved in.

The landlord gave evidence that he ended the tenancy by issuing a two-month notice to end tenancy for landlord's use (the "Notice") after he sold the property to new owners. The effective date on the Notice was February 20, 2014.

The landlord gave evidence that he or his realtor went to the property on February 20, 2014 and observed that the tenant was starting to move his belongings from the rental unit. However, their impression was that there were so many items to move that the tenant would not be able to vacate the rental unit on the effective date. Accordingly, the landlord or his realtor told the tenant that they would assist him in moving out. The landlord says his motivation for doing this was so that the property would be vacant for the new owners, as his contract with the new owners required.

The landlord says the tenant was asked to identify which items he wanted to move and which items he wanted to dispose of. The tenant identified a large quantity of items he wished to dispose of. The landlord hired a junk removal service to take these items to the dump. His evidence is that the removal service used a five-ton truck and made three trips to the dump. The landlord paid the removal service \$1,150.00 for the three trips. He claims this amount from the tenant.

The landlord gave evidence that he rented a five-ton truck on February 20 and again on February 21, 2014 to move the tenant's belongings, some to a storage locker in Burnaby and others to Langley. The cost of renting the moving truck on two separate days was \$375.79. He claims this amount from the tenant.

The landlord also claims the cost of labour for four people he hired to help him move the tenant. He says he hired four people at \$15.00 per hour and they did a total of 16 hours work over the course of two days, at a cost of \$240.00. He also paid gas costs of \$30.00. He claims the amount of \$270.00 from the tenant.

The landlord also claims the cost of hiring a relative, who was also the realtor involved in the property sale, for his time over three days to move the tenant. He claims \$355.00 from the tenant for his realtor's labour. The landlord's total claim is \$2,150.79.

The tenant agrees that the landlord assisted him in moving and disposing of unwanted possessions. However, he says the landlord or his realtor told him they would "take care of moving" for him. He understood this to mean that the landlord would pay his moving costs. He says the landlord's realtor told him to leave any items he did not want to take, because the house was going to be torn down. He says that many of the items left behind did not belong to him, but to the previous owner who was a contractor and who left many items in the garage.

The tenant noted that he had a trailer which he was going to use for moving before the landlord took over his move.

The tenant claims the landlord's movers damaged a barrel of homemade blackberry wine while they were moving it to the storage locker. He says one of the movers was intoxicated. A barrel fell off the end of a ramp and one of the movers kicked the nozzle. As a result of the damage, the barrel developed a leak and the tenant was not permitted to bring it into the storage facility. Therefore, they left the barrel outside the storage facility and it disappeared. The tenant claims \$2,200.00 from the landlord as the value of the homemade wine, based on \$10.00 per litre and a 220 litre barrel. He says he researched the value of blackberry wine on the internet.

The landlord denies responsibility for damaging the wine barrel. His evidence is that none of the movers was intoxicated. He says the tenant's wine barrels appeared to be makeshift and not professional. The landlord also says that the wine was not drinkable according to some of the movers who tried it.

The landlord's realtor says the previous owner of the property said he had removed all his items from the property, and so the remaining items belonged to the tenant. He said the tenant had a Ford Escort and a trailer and there was no feasible way the tenant could have moved all the items on the rental property without more help.

The landlord's realtor agrees he told the tenant he would "take care of" the tenant's move. The tenant had no credit card or money and it was apparent that he needed help. The landlord's realtor's evidence is that he did not advise the tenant that the tenant would have to reimburse the landlord for moving costs.

The landlord's realtor says the subject removal date was February 21, 2014 and the new owners came to the site on February 22, 2014. The sale did complete because the property was vacant and all items had been removed. The new owners were going to bulldoze and needed to check for an oil tank before they did so.

The landlord's realtor says the wine barrels were plastic and not appropriate for aging wine; he says the nozzles on the barrels were attached by the tenant. His evidence is that they left the leaking wine barrel within a gated yard of the storage facility.

The landlord agrees he did not say anything to the tenant about who would pay for the move. He wished to get the tenant moved out and worry about the bills later. He says he made no promises to the tenant. He did not ask the tenant to pay for the move afterward since he did not have the tenant's forwarding address. He also thought there was no point suing the tenant, since the tenant likely did not have the money.

Analysis

I find the tenant has not proven, on a balance of probabilities, that the landlord is responsible for the loss of his wine barrel. It is not clear from the evidence whether the barrels were appropriate for moving wine, and it is not clear whether there was any negligence on the part of the landlord or his workers that resulted in damage. Also, I accept the evidence of the landlord's realtor that the wine barrel was left within the gates of the storage facility, and it is likely the storage facility disposed of it. Further, since homemade wine cannot be sold in British Columbia, it is not clear whether the wine had any monetary value.

I find the landlord is estopped from claiming moving and some removal costs from the tenant. I accept the evidence of the parties that the landlord or his realtor told the tenant they would "take care of" his move, and the tenant understood that to mean he would not have to pay for it. The tenant altered his course of action in reliance on the landlord's promise to "take care of" the move, and the landlord cannot later assert a right to be reimbursed.

However, I accept the evidence of the landlord and his realtor that the tenant, with only a trailer and without an ability to hire movers, would not have been able to move all of his belongings from the property by the effective date. It is very likely that if the landlord had not assisted with the moving and removal, there would have been items left behind for the landlord to dispose of.

I find that the landlord would have incurred removal costs of some amount in any event, and I award the landlord a nominal amount of \$500.00 as compensation for those removal costs. The landlord is also entitled to recover his RTB filing fee of \$50.00.

The tenant's security deposit, paid in 2005, has now accrued interest of \$10.63 [calculated from July 2005 to July 2014] and so totals \$310.63.

The total amount due the landlord is \$550.00. I order that the landlord retain the security deposit of \$310.63 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$239.37. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of \$239.37. The landlord is also entitled to retain the security deposit. The tenant's application is dismissed.

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: July 14, 2014

Residential Tenancy Branch

