



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0771168 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in July or August 2011 and ended in September 2012.

The tenant testified that her rent due on September 1, 2012, which was paid directly by the Ministry of Employment and Income Assistance, was held up due to a Canada Post strike and was not delivered to the landlord on time. She testified that she returned to the rental unit on September 5 and was told by the staff that she could not access the rental unit. The tenant stated that she slept on the street that night and returned the next day but was again refused entry. She claimed she was further refused entry on September 16 and “many times after that” and that on September 30, her advocate contacted the landlord and was told that her belongings were in the basement of the residential property. She testified that she went to the property on November 18, 2013 to retrieve her belongings and was told that the belongings were not there.

The tenant further testified that she believed that J., a person with whom she had lived in the rental unit, had taken over the unit and stated that she received some of her belongings from him.

The landlord gave evidence that the tenant did not pay her rent in September 2012 and was not seen at the property during that month. He claimed that on September 25, he

personally viewed the tenant's room and saw that her belongings were in his opinion, valued at \$200.00 or less. He removed her belongings from the room and stored them, including a mattress, in the basement of the residential property. The landlord provided letters from his staff who stated that in January 2013, the tenant came to retrieve her belongings. J.E. brought the tenant's belongings from the basement to the curb and claimed that she and 2 friends removed all of the items with the exception of the mattress. The landlord testified that because the tenant did not return to retrieve her mattress, he discarded it several months later.

The tenant seeks to recover \$7,000.00 as the value of her belongings and \$1,000.00 as aggravated damages.

Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. Neither of the parties called witnesses to give direct testimony, although the landlord provided a written statement from J.E.

The tenant acknowledged that rent was not paid in the month of September 2012. She claimed to have returned to the rental unit on September 5, 2012 and several other times that month, but the landlord claimed that she did not return until November 2012. I found both parties to be equally credible. In order to prove her claim, the tenant must persuade me by at least 51% that her version of events is more likely than that of the landlord. I am not so persuaded and I am unable to find that the tenant returned to the rental unit in September 2012. As both parties agreed that the tenant returned in November 2012, I find that this is the date on which the tenant returned to the residential property to retrieve her belongings.

Part 5 of the Residential Tenancy Regulations contain provisions directing landlords about how to deal with goods that have been abandoned by a tenant and provides as follows:

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.

The landlord acknowledged that he removed the tenant's belongings on September 25, less than one month after rent was due. Section 24(1)(b)(i) of the regulations provides that the landlord may consider the unit as abandoned only if the tenant has not ordinarily occupied the unit and has not paid rent for a continuous period of one month. Further, the landlord may only consider the unit as abandoned if he's received word of the tenant's intention not to return or the circumstances are such that the tenant could not have been expected to return. I find that on September 25, the landlord was not entitled to consider the unit as abandoned and I find that the landlord wrongfully removed her belongings from the rental unit on that date.

However, having already made a finding that the tenant did not return to the residential property until November 2012, I find that by the time the tenant returned, the landlord had long since been entitled to consider the premises abandoned as he had not seen the tenant for more than 2 months and had not received rent.

Section 25 of the Regulations provides as follows:

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.

In this case, I accept that the landlord stored the tenant's property until November 2012 and possibly until January 2013. The landlord estimated the value of the tenant's belongings at less than \$200.00. Although the tenant provided a receipt showing that she purchased a mattress, box spring and frame for \$1,300.00 in 2010, mattresses depreciate quickly and the tenant gave no evidence as to the condition of the mattress in 2012.

The tenant provided receipts and photographs of her belongings, but did not provide witness evidence to prove that the belongings she claims were taken were actually in the rental unit at the end of her tenancy. The landlord testified that he did not see any items of value in the suite and again, the tenant has failed to persuade me that it is at least 51% more likely that her version of events is more accurate than that of the landlord.

Pursuant to section 25(2)(a) of the regulations as quoted above, I find that the landlord had the right to dispose of the tenant's belongings. Because the landlord had the right to dispose of the belongings, it is unnecessary for me to make a finding as to whether the tenant retrieved her belongings in January as claimed by the landlord.

I have already made a finding that the landlord removed the tenant's belongings from the rental unit before he was legally entitled to do so. However, in order to award the tenant damages for this breach of the Regulations, the tenant must prove that she suffered a loss as a direct result of the breach. Because I have found that the tenant has not proven that she returned to the residential property prior to November, I find that any loss she suffered was as a result of waiting to retrieve her belongings as she did not attempt to retrieve them before the landlord had the right to dispose of them.

For these reasons, I dismiss the tenant's claim in its entirety.

Conclusion

The claim 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: October 16, 2014

Residential Tenancy Branch

