

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with an application by the tenant for an order for the return of his personal property and an order that the landlord return his personal property. The tenant testified that he served the landlord with his application for dispute resolution and notice of hearing by serving those documents on an agent of the landlord at the front desk of the residential property. I was satisfied that the landlord had notice of the hearing and the claim made against him and the hearing proceeded in his absence.

The applicant provided written submissions showing that the Supreme Court had with respect to other actions made under the *Residential Tenancy Act* against this landlord determined that while the landlord calls itself a Recovery Society, it cannot be considered to provide rehabilitative or therapeutic treatment or services to its tenants. As a result of judicial reviews, the Supreme Court ordered in those other actions that the Residential Tenancy Branch take jurisdiction over the tenancies. In those cases, as in the present case, tenants were required under a term of the tenancy agreement to have their methadone prescriptions filled by the landlord but received no other treatment or services. As jurisdiction was not challenged by the landlord, I accepted the tenant's *prima facie* evidence on this issue and the hearing proceeded on the basis that I have jurisdiction to hear this matter.

Issues to be Decided

Is the tenant entitled to an order for the return of his personal property?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant's undisputed testimony is as follows. The landlord is a corporate entity which self-identifies as a Recovery Society and requires as a term of the tenancy

agreement, all tenants to fill their methadone prescriptions through the landlord's pharmacy. In a letter dated February 3, 2009 the landlord advised the tenant that because he had switched pharmaceutical providers, his tenancy would end in 48 hours. The landlord locked the tenant out of the building and despite the tenant's repeated requests for permission to access and remove his belongings, the landlord refused the tenant further access. The tenant explained that the building is a secure building to which one can only gain access by summoning the landlord's agent by means of a doorbell type of system.

As a result of the February eviction, the tenant was left homeless with only the clothes on his back. He remained homeless for approximately 7 months, during which time he kept the few belongings he was able to acquire in a shopping cart. The tenant itemized the items in the rental unit at the time of the eviction as follows:

Item		Value
A	Leather jacket #1	\$ 200.00
B	Leather jacket #2	\$ 200.00
C	Leather vest	\$ 65.00
D	4 pairs running shoes	\$ 420.00
E	2 pairs dress shoes	\$ 232.00
F	1 pair sandals	\$ 25.00
G	1 pair slippers	\$ 31.00
H	4 pairs jeans	\$ 190.00
I	3 pairs cargo pants	\$ 94.50
J	10 pairs socks	\$ 55.00
K	10 T-shirts	\$ 150.00
L	10 pairs underwear	\$ 225.00
M	1 Sony television	\$ 105.50
N	1 JVC DVD player	\$ 20.00
O	1 Sony boom box	\$ 75.00
P	1 80g iPod	\$ 100.00
Q	1 pair earphones	\$ 23.00
R	1 Braun electric razor	\$ 33.00
S	1 RCA MP3 player	\$ 83.50
T	1 Sony Cybershot 5.1mp camera	\$ 50.00
U	HP laptop with Centrino	\$ 450.00
Total:		\$2,827.50

The tenant testified that his computer, iPod and camera were less than one year old and his boom box approximately 2 years old. The tenant provided information showing the cost of replacing many of the items he lost. In addition to providing evidence of what many of the items would cost when purchased in new condition, the tenant also provided advertisements for the leather jackets and the electronics from Craigslist and eBay to show the used value of the items. The figures in the table above represent the average price where more than one source for valuation was used.

The tenant testified that in addition to the aforementioned items, he lost other items which are irreplaceable, such as his notes from a 10-month college course and a wedding photo of his parents from 1949.

Analysis

I accept the undisputed testimony of the tenant. There is no question that the landlord illegally evicted the tenant. The Act sets forth strict procedural guidelines for landlords to follow when they wish to evict tenants and the landlord failed to comply with his statutory obligations.

The tenant applied for an order that the landlord return his personal property and a monetary order for the value of the property. To grant the tenant both orders would amount to double recovery. I find that as more than one year has passed since the landlord wrongfully distrained the goods and as there is no evidence that the landlord is still in possession of those goods, it is impractical to order the return of the property. I therefore dismiss the tenant's claim for an order for the return of his personal property.

I find that the tenant suffered the loss of his personal belongings directly as a result of the landlord's failure to comply with the Act. For that reason, I find that the landlord must compensate the tenant for the damage flowing therefrom pursuant to section 7(1) of the Act. The tenant provided estimates of the value of his goods and for most of the items, took into account the age of the item when providing an estimate. The items for which the tenant provided estimates for replacing the used goods with new goods are as follows: running shoes, dress shoes, sandals, slippers, jeans, cargo pants, socks, t-

shirts and underwear. The tenant seeks to recover the actual value of his goods as opposed to the market value or replacement value. The tenant referred me to *Robertson v. Stang*, 1997 CanLII 2122 (B.C.S.C.) in which Parrett J. identified the following 4 factors as relevant to a determination of the actual value of goods:

- (a) The amount paid for the goods at the time of purchase;
- (b) The retail value of the goods at the time they were purchased;
- (c) The cost of replacing the goods taking into account inflation and taxes; and
- (d) The estimated market value of the goods at the time of the loss, considering that some items may appreciate or depreciate.

I find this direction helpful to determine the value, although the evidence is somewhat sparse with respect to several factors. In this case, the tenant has no receipts to show what he paid for his goods at the time of purchase, nor would he be expected to as all of his belongings, including any paperwork he might have, were taken. The tenant provided no evidence as to the retail value of the goods at the time they were purchased but did provide a number of advertisements showing the market rate of the used electronics and leather clothing. I accept the tenant's valuation of the used electronics and leather clothing, itemized as A-C and M-U above and I award him the amount claimed for each of those items. I find that the actual value of the remainder of the clothing and the shoes must take into account depreciation of those items. I find that a depreciation of 50% is appropriate for items D-L and I award the tenant 50% of his claim for those items.

The tenant has also made a claim for aggravated damages. Residential Tenancy Policy Guideline 16-3 provides a useful explanation of aggravated damages which I reproduce here.

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must be specifically sought.

I have already found that the landlord illegally evicted the tenant. He displayed a wilful disregard to the law and indifference to the effect of his actions on the tenant. The loss suffered by the tenant was significant. The landlord knew or should have known that the tenant was a man of modest means and that the effect of a summary eviction would result in homelessness. The fact that the tenant was able to continue with his methadone treatment during the seven month period of homelessness and has now been able to re-establish himself is a testament to his character and in no way diminishes the profound effect the landlord's actions had upon him. In addition to losing his home, the tenant lost substantially all of his worldly goods as a result of the landlord's refusal to return the goods to him. Losing one's possessions would strike a hard blow on anyone, but is particularly significant when one lacks any means to replace the goods within a reasonable period of time. In this case, more than a year after the event the tenant has still not been able to replace all of the goods which were wrongfully taken.

I find that the landlord's actions are sufficiently egregious and the effect of those actions had a sufficiently detrimental effect on the tenant so as to attract an award of aggravated damages. I find that an award for pecuniary losses will not sufficiently compensate the tenant. The tenant claims \$2,693.00 in aggravated damages which I find to be more than reasonable. I award the tenant \$2,693.00.

Conclusion

The tenant has been awarded the following:

Pecuniary	
Item	Value

A	Leather jacket #1	\$ 200.00
B	Leather jacket #2	\$ 200.00
C	Leather vest	\$ 65.00
D	4 pairs running shoes	\$ 210.00
E	2 pairs dress shoes	\$ 116.00
F	1 pair sandals	\$ 12.50
G	1 pair slippers	\$ 15.50
H	4 pairs jeans	\$ 95.00
I	3 pairs cargo pants	\$ 47.25
J	10 pairs socks	\$ 27.50
K	10 T-shirts	\$ 75.00
L	10 pairs underwear	\$ 112.50
M	1 Sony television	\$ 105.50
N	1 JVC DVD player	\$ 20.00
O	1 Sony boom box	\$ 75.00
P	1 80g iPod	\$ 100.00
Q	1 pair earphones	\$ 23.00
R	1 Braun electric razor	\$ 33.00
S	1 RCA MP3 player	\$ 83.50
T	1 Sony Cybershot 5.1mp camera	\$ 50.00
U	HP laptop with Centrino	\$ 450.00
Non-Pecuniary		
	Aggravated damages	\$2,693.00
	Total:	\$4,809.25

I grant the tenant a monetary order under section 67 for \$4,809.25. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 26, 2010

Dispute Resolution Officer