

Residential Tenancies Tribunal

Application 2022-1032-NL

Decision 22-1032-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:04 a.m. on 11-January-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.

Preliminary Matters

4. The tenant did not submit an affidavit to show service of notifications of the hearing, she did provide screen shots (TT#01 & TT#02) to show that she sent the respondents packages by prepaid registered mail. She also provided this tracking number ([REDACTED]). The tenant stated that she sent the packages on 26-December-2022 and both landlords confirmed receipt of notification on 27-December-2022.

Issues before the Tribunal

5. The tenant is seeking:
 - Possessions returned \$4,038.91.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 32: Abandoned personal property and Section 33: Seizure of property.

Issue 1: Possessions returned \$4,038.91

Tenant's Position

8. The tenant said that she had a verbal rental agreement with the landlords. She said her rental period is from the first day of each month until the last. She paid \$736.00 rent (pay own utilities), rent was due on the first day of the month. She said that she moved in May 24th weekend 2019 and that she moved out 30-September-2022. She said just before she moved in she paid a security deposit of \$450.00 and that the landlords are still in possession of the deposit.
9. The tenant said that the landlords gave her a verbal notice to leave on 05-September-2022 and that she disputes the validity of notice but did move the end of the month.
10. The tenant provided a copy of the list of possessions she wants returned (TT#03). She said that she sent a copy to the landlords at their daughter-in-laws email address on 04-January-2023. The tenant said that she had received evidence from the landlords at this address; so she sent her evidence to the same address.
11. As the landlords did not receive the list from their daughter-in law's email, the tenant read into evidence her list of possessions from the list she provided, as follows:

Item	Value
4 winter tires/rims new \$179.99 each	\$315.96
Garcia Rod	\$165.00
Garcia Reel	\$185.00
Trampoline	\$300.00
Alloy rims 17" \$137.00 each	\$548.00
3 solid wood dining room chairs	\$200.00
Paw Patrol toys	\$400.00
Two ice fishing rods	\$30.00
Pump for pool	\$75.00
Pool	\$100.00
2 person hammock	\$200.00
Jerry can with gas	\$40.00
Chainsaw bar oil	\$20.00

Garbage bag of dinkie race tracks	\$50.00
Skidoo GT racer slide	\$200.00
BMX bike	\$300.00
Curtains porch	\$100.00
Rod – heavy duty rebar	\$100.00
Tarps x 3	\$90.00
Total	\$4,037.91

12. The tenant said that these belongings were left in the shed when she moved on 30-September-2022 with the exception of the pool (which was drying out on the patio) and that they had an agreement that she was going to pick everything up 11-October-2022 at 11:00 a.m. A few days before, she had a friend go on the property and she said that everything was gone. The tenant said that her brother told her that the landlords had her mother take all the belongings. The tenant said that she and her mother don't speak. She said that to give her belongings to someone she has no contact with would be the same as throwing everything in the garbage.
13. The tenant said that she works full time and has a small child, she said she lives two hours away. She would not agree to a date to pick up her belongings from the landlords.

Landlords' Position

14. Landlord1 said that the tenant only paid \$350.00 security deposit and that the tenant frequently didn't pay the rent on time. Landlord1 said that they did keep the security deposit because there were damages. She said that on the day that the tenant moved she went to do a walk through at the house. She said that the house was destroyed but they didn't fill out a condition report at that time.
15. Landlord1 said that she gave the tenant notice because of careless use of property. She said that she gave her notice on 10-September-2022 with a termination date of 10-November-2022. She said that the tenant moved the end of September and into the first week of October.
16. Landlord1 said she doesn't have an email address. She asked her daughter-in-law to send their evidence to the tenant on her behalf. She said that the tenant started sending her evidence to the daughter-in-law's email, she said that the tenant had no right to use this address and that they have not received the evidence provided by the tenant to that address.
17. Landlord1 said she went in to the office to get permission to dispose of the belongings. She said that they agreed on the 11th of October the tenant was to come to the property

at 11:00 a.m., by 1:00 p.m. she still hadn't shown up. She said that she called the tenant and that the tenant said she was coming on the 22nd.

18. Landlord2 said that the tenant's mother called to get a fern belonging to the tenant and that she subsequently offered to take all of the belongings. Both landlords don't understand why the tenant is seeking money for her belongings. They said that the tenant's mother has all the belongings at her home and that the tenant can pick the belongings up from there.
19. Landlord1 submitted an affidavit (LL#01) that has a list of belongings that the tenant's mother said she has in her possession. Landlord2 said that the tenant's mother has offered to bring the stuff back. They both said that they could get all the belongings back and that the tenant only need to tell them when she is coming to retrieve her belongings.
20. Landlord2 said that the tenant had broken the lock off the shed. He said that the belongings were left in the shed unsecured and that he doesn't think she was ever coming to pick the belongings up. When her mother offered to pick up the belongings they were grateful that someone was going to take the stuff out of their shed.
21. Landlord2 said that the belongings weren't moved until 22-November-2022, the tenant never paid for storage and she never came to get her stuff.

Analysis

22. There are issues beyond those listed on the application, matters of security deposits and damages cannot be heard unless there is an application for same. In regard to the landlords not receiving the possessions missing list, I find that the landlords used their daughter-in-laws email address to submit evidence to the tenant, therefore it is reasonable for the tenant to use the senders address with her responding evidence. The tenant provided the information within the timelines required and as the only evidence not received was the list of belongings and the tenant's valuation of each item, I accepted the tenant's reading the list into evidence.
23. Section 32 of the *Residential Tenancies Act, 2018*, is as follows:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

(a) remove the personal property and immediately place it in safe storage; or

(b) store the personal property on the residential premises in a safe manner.

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

(a) provide the director with an inventory of the property; and

(b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.

(4) The director may, on application by the landlord under section 42, authorize the landlord to dispose of personal property referred to in subsection (1) where the director believes on reasonable grounds that

(a) the personal property has no monetary value;

(b) the cost of removing, storing or selling the personal property would be more than the proceeds of the sale; or

(c) the storage of the personal property would be unsanitary or unsafe.

(5) This section does not apply where a landlord and a tenant have made an agreement in writing with respect to the storage of the tenant's personal property.

(6) The tenant or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

(7) Where a landlord stores personal property on the residential premises in accordance with subsection (1), the storage costs referenced in subsection (6) shall be the lesser of the standard rate charged by public storage facilities or the rental rate of the residential premises.

(8) Where a tenant or owner takes possession of personal property within the 30 day period, the landlord shall notify the director at the earliest reasonable opportunity.

(9) Where a tenant or owner does not take possession of personal property within the 30 day period, the landlord may sell the personal property subject to the terms and conditions set by the director.

(10) Where personal property is sold under subsection (9), the landlord

(a) may keep from the proceeds of the sale, the amount

(i) of the costs reasonably incurred by the landlord for the removal, storage and sale of the personal property, and

(ii) necessary to satisfy an order made by the director for compensation payable to the landlord by the tenant; and

(b) shall, at the earliest reasonable opportunity, deliver to the director

(i) the proceeds of the sale, less the amount kept under paragraph (a), and

(ii) a written statement of account regarding the sale and distribution of the proceeds.

(11) The director shall hold the proceeds delivered by the landlord under subparagraph (10)(b)(i) in trust for the tenant or owner of the personal property in an interest bearing trust account in a financial institution located in the province authorized to accept deposits.

(12) Where proceeds held in trust by the director are not claimed under subsection (11) within one year after the sale, the director shall remit the proceeds, together with interest earned, to the Consolidated Revenue Fund.

(13) Where a tenant or a person claims to be the owner of personal property sold under subsection (9), the director under subsection (11) or the Minister of Finance under subsection (12) shall, upon satisfactory proof of the claim, pay the proceeds to that tenant or person.

24. It is the tenant's responsibility to move their own belongings. As she didn't take everything after she moved, both parties confirm there was an agreement made that the belongings would be collected the following week. The tenant was to make

arrangements for the removal of her belongings, however she did not do so on the date stated. The task then fell to the landlords. The landlord's obligation is to store for not less than 30 days.

25. The landlords stored the belongings until 22-November-2022. If the landlords wish to dispose of the belongings it is incumbent on them to apply to the Director of Residential Tenancies for permission. After the 30 days instead of disposing of the belongings, the landlords had the personal property removed and immediately placed in safe storage; I accept the landlords' testimony that they permitted the tenant's mother to take the property for safe keeping. I also accept that the tenant has a contentious relationship with her mother and doesn't want to be forced to retrieve her belongings from her.
26. The landlords not only attempted to keep the tenant's belongings safe, they also agreed to retrieve the belongings from the tenant's mother and again give the tenant the opportunity to come collect her things; this is above and beyond their obligation. The tenant would not set a date to retrieve her belongings.
27. The tenant left her belongings behind after her move, didn't show up on the agreed date to collect her belongings and during the hearing refused to set a date to collect her belongings. The landlords are only responsible for a period of 30 days. The tenant, through her actions, is responsible for the loss of the listed belongings. She was given a number of opportunities to retrieve her property and decided against it. The landlords have acted in accordance with the Act and have gone above and beyond to care for the tenant's belongings. The tenant's claim for loss is without merit and I find her claim fails.

Decision


28. The tenant's claim for compensation fails.

Summary of Decision

29. The tenant's claim for compensation for loss of personal belongings fails.

January 18, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office