



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD RPP LRE O
For the landlord: MND MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, return of all or part of the security deposit and pet damage deposit, for an order directing the landlord to return the tenant’s personal property, and suspend or set conditions on the landlord’s right to enter the rental unit and “other”, although there were no details of “other” aspects to the tenant’s application included in the tenant’s application.

The landlord applied a monetary order for damage to the unit, site or property, to keep all or part of the pet damage deposit and security deposit, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties agreed at the outset of the hearing that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant withdrew the portions of this application regarding “other” and for an order directing the landlord to suspend or set conditions on the landlord’s right to enter the rental unit as the tenancy has ended.

During the hearing, the tenant disconnected from the conference call on several occasions. The tenant was warned for his behaviour during the hearing as he consistently raised his voice and interrupted myself and the landlord throughout the proceeding. Towards the end of the hearing, the tenant was advised that he would be disconnected from the hearing if he did not abide by my warnings to cease interrupting and raising his voice. Ultimately, the hearing concluded after 72 minutes without the tenant being disconnected by myself, however, I note the tenant’s behaviour was inappropriate and disruptive during the dispute resolution hearing.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Should the landlord be directed to return the personal property of the tenant?
- What should happen to the security deposit and pet damage deposit under the *Act*?

Background and Evidence

The tenancy began on March 26, 2012 and was a month to month tenancy. Monthly rent in the amount of \$415.00 was due on the first day of each month. A security deposit of \$207.50 and a pet damage deposit of \$92.50 was paid by the tenant at the start of an earlier tenancy in April 2011 at a different rental unit, and was transferred to the new tenancy through the consent of the parties.

The landlord testified that he served the tenant with a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) on or about May 15, 2012. The tenant confirmed receiving the 2 Month Notice which indicated an effective vacancy date of July 31, 2012.

The tenant testified that he was arrested on or about June 10, 2012, and was released a couple days later, however, could not recall specific dates. The landlord testified that the tenant was arrested for assaulting the caretaker and was placed on bail for Assault and Mischief. A copy of a court bail document naming the tenant was submitted in evidence. According to the document, the date of the alleged offences was June 20, 2012, and prohibited the tenant from attending the rental unit building and not to contact or communicate directly or indirectly with the alleged victim caretaker "SB". The tenant testified that the charges against him were dismissed, however, had no evidence to support his testimony. The landlord disputed the tenant's testimony, and said that they have not been made aware that the charges were dismissed against the tenant and believe that the matter is still before the courts.

The landlord submitted a witness statement from the alleged victim caretaker SB stating that on June 20, 2012:

"...(the tenant) kicked my door in and physically assaulted me. He was screaming profanities and threats the whole time and ripped up the warning letter and threw it in my face multiple times, hitting me hard, bruising my cheek and blackening my eye. I tried to push him out of my suite and shut the door, but he kept fighting me to gain entry, scratching and bruising my right wrist in the process...Because (the tenant) was waiting for me and attacked the moment I came home, I feel it was pre-meditated. And the anger and aggression was so intense, I feel that it was uncontrollable, which made me fear for my life, given that he had threatened to kill me in the past..."

[reproduced as written]

The landlord testified that after the tenant was arrested and prohibited from returning to the rental building, they saw people coming and going from the rental unit including the removal of items. On June 24, 2012, when the landlord found the rental unit door open 6 inches and unsecure, they decided to change the locks on the rental unit, take photos of the contents of the rental unit, and arrange to place the personal items of the tenant in storage. The landlord stated that he arranged to store the tenant's personal items until the tenant retrieved the items, for the purposes of protecting what personal items remained of the tenant in the rental unit as of June 24, 2012.

Tenant's claim

The tenant is claiming \$6,658.33 comprised of the following:

Item #	Description	Amount
1	Computer	\$2,300.00
2	Leather jacket	\$850.00
3	Yamaha keyboard	\$1,200.00
4	Cash box (contents)	\$800.00
5	Ornaments	\$300.00
6	Art work	\$350.00
7	Rent and deposits	\$858.33
	TOTAL	\$6,658.33

The tenant did not submit receipts or other corroborating evidence regarding the value of the items. The tenant provided 3 typed letters in evidence. The first letter from a person named WJ, indicates that he witnessed several items in the rental unit such as the cash box containing \$800.00.

The second letter was signed by a person named TL, who the tenant indicated would be a witness during the hearing, however, was not available during the hearing. TL typed in the letter:

“...HE GAVE ME HIS KEYS AND ASKED IF WE WOULD RETRIEVE A CASH BOX AND SOME PERSONAL ITEMS. WHEN WE GOT THERE THE SUITE WAS EMPTY AND HIS COMPUTER DESK WAS BESIDE THE GARBAGE BIN. I LOOKED INSIDE THE BIN AND SAW PITCHERS AND ITEMS I KNOW BELONGED TO HIS DOG. THE MANGER STARTED SCREAMING AT US SO WE LEFT TO TELL (THE TENANT) WHO THEN CALLED THE POLICE.”

[reproduced as written]

The third letter was from a person named JH, and indicates that the tenant was at the home of JH when he asked an unnamed acquaintance if they would “get some things from his apartment”. JH also typed in the letter that they returned saying “...the place was empty and some things were in the garbage bin, he then called the police and never left my house...”.

The tenant did not provide the police report referred to above by witness TL. None of the individuals were called as witnesses by the tenant and were unable to be cross-examined by the landlord during the hearing.

Tenant Item #1 of 7

The tenant testified that he is claiming \$2,300.00 for a computer that he purchased at Future Shop about 5 or 6 months prior to the hearing. The tenant confirmed during the hearing that he did not have a model number for the computer but described the computer as an "HP" which also included an MP3 player, however, no details of that MP3 player were provided during the hearing. The tenant did not have a receipt, photos or other corroborating evidence to support the value or existence of this portion of his claim.

Tenant Item #2 of 7

The tenant testified that he is claiming \$850.00 for a leather jacket that he purchased at The Leather Ranch about 5 years earlier. The tenant confirmed during the hearing that he did not have a receipt, photos or other corroborating evidence to support the value or existence of this portion of his claim.

Tenant Item #3 of 7

The tenant testified that he is claiming \$1,200.00 for what the tenant describes as a "professional" Yamaha keyboard. The tenant confirmed during the hearing that he did not have a receipt to support the value of this portion of his claim. The tenant testified that he purchased the keyboard at Long & McQuade in Vancouver about 6 ½ years prior to the hearing. The photo of the keyboard submitted by the landlord in evidence, shows at least one key on the keyboard that appears broken as it is lower than the other keys and was taken inside the rental unit according to the landlord.

Tenant Item #4 of 7

The tenant testified that he is claiming \$800.00 for a cash box containing \$800.00 in cash. The tenant confirmed during the hearing that he did not have photos of the cash box or contents, however, referred to the typed statements submitted in evidence which support the existence of the cash box and the amount of cash it contained.

Tenant Item #5 of 7

The tenant testified that he is claiming \$350.00 for art work. The tenant confirmed during the hearing that he did not have receipts, close up photos or other corroborating evidence to support the value of this portion of his claim. The tenant alleges that the art work were signature pieces from Artist Maga Sutlan, however, the only photo which shows framed pictures or art work were submitted by the landlord and were not taken close up, so it is difficult to see any details of the framed pictures or art work. The tenant alleges the frame and glass were broken by the landlord, however, the tenant did not submit any photos of broken framed pictures or art work.

Tenant Item #6 of 7

The tenant testified that he is claiming \$300.00 for 2 large horse ornaments that were approximately three feet high and were given to him as gifts. The tenant confirmed during the hearing that he did not have a receipt, photos or other corroborating evidence to support the value or existence of this portion of his claim. The tenant alleges that the horse ornaments were broken by the landlord, however, did not submit photos or other evidence showing the broken horse ornaments.

Tenant Item #7 of 7

The tenant testified that he is claiming \$858.33 consisting of \$415.00 for July 2012 rent due to the 2 month notice issued by the landlord, \$138.33 from June 2012 rent that was paid by the tenant, his pet damage deposit of \$97.50 and his security deposit of \$207.50.

The tenant alleges that the landlord stole and broke his items. The landlord disputed the tenant's testimony. The landlord denied that the rental unit contained a computer, leather jacket, cash box. The landlord denies stealing or damaging the tenant's personal items.

The landlord did confirm that he removed a keyboard, however, according to the photos provided already had a key broken which was supported by the photo evidence as it was hanging lower than the other keys on the keyboard.

Landlord's claim

The landlord is claiming a monetary order in the amount of \$1,668.97 comprised of the following:

Item #	Description	Amount
1	Hauling charge of tenant's personal items	\$120.00
2	Storage locker costs to store tenant's personal items	\$186.66
3	Suite cleaning	\$175.00
4	Cost to replace damaged caretaker door kicked in by tenant	\$1,187.31
	TOTAL	\$1,668.97

Landlord Item #1 of 4

The agent testified that he is claiming \$120.00 for hauling charges to move the tenant's personal items into storage after the tenant assaulted the caretaker and was ordered by the courts not to attend the building or have contact with the caretaker. The landlord did not submit a receipt or other evidence to support the hauling charge fee being claimed.

Landlord Item #2 of 4

The agent testified that he is claiming \$186.66 for storage locker costs associated with storing the tenant's personal after the tenant's items were removed from the rental unit. The landlord submitted a receipt in the amount of \$186.66 and the self-storage rental contract in evidence to support this portion of their claim. The rental contract was dated June 24, 2012 and was comprised of the remaining days of June 2012, and the full months of July and August 2012.

Landlord Item #3 of 4

The agent testified that he is claiming \$175.00 for suite cleaning. The landlord did not submit an invoice or receipt in evidence to support this portion of the landlord's claim.

Landlord Item #4 of 4

The agent testified that he is claiming \$1,187.31 for the cost of door of the caretaker that was kicked in and damaged by the tenant. The landlord did not submit photos of the damaged door in evidence. The landlord did, however, submit an invoice in evidence in the amount of \$1,187.31 which indicates "replacement of door" and includes the address of the caretaker. The landlord testified that the bail order and the related

conditions that the tenant was placed on after he was charged, supports that the door was damaged. The tenant denied kicking the door of the caretaker.

Other testimony from both parties

The tenant testified that the only thing of value left in the storage locker were pots and pans. The tenant did not supply any photos in support of his claims as part of his application for a monetary order.

The tenant alleged that the landlord illegally entered his rental unit, stole his evidence and destroyed many of his personal items, resulting in the tenant receiving nothing back of value. The agent disputed the tenant's testimony by stating that they considered the rental unit abandoned and changed the locks and stored the items to prevent further loss as the rental unit was left unsecured. The agent denied stealing any items, throwing any items in the garbage or being rough with any of the tenant's personal items. The agent testified that items were wrapped in paper and were taken care of. Both parties claimed that the other party were not being truthful during the hearing.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

End of tenancy and order directing return of tenant's personal property – I will first deal with determining how the tenancy ended. The tenant claims that the landlord illegally entered the rental unit, stole his personal items and damaged many of the remaining items. The landlord testified that they deemed the rental unit abandoned and after realizing that the rental unit door was left unsecure with people coming and going from the rental unit and items being removed, they changed the locks and arrange to storage what was remaining in the rental unit.

Section 44(1)(d) of the *Act* states that a tenancy ends if the tenant vacates or abandons the rental unit. **I find** that on the balance of probabilities, the tenant ended the tenancy on June 20, 2012 by the tenant's own actions. Specifically, I accept on the balance of probabilities that the tenant kicked the door of the caretaker and assaulted the caretaker, prompting the arrest of the tenant and the tenant being placed on bail for Assault and Mischief charges, and with conditions not to attend the rental unit and not to contact, directly or indirectly, the caretaker.

As a result of the tenant's own actions, **I find** the tenant put himself in a position of being prohibited to attend the rental building and therefore abandoned the rental unit. The tenant failed to provide any supporting evidence that he was no longer bound by the court order submitted in evidence with contained the area restriction and no contact condition with the caretaker.

As a result of the above, **I find** the landlord did not enter the rental unit illegally and complied with section 25 of the regulation which requires that when a rental unit has been abandoned, the landlord must 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. Although the landlord did not keep a written inventory, I find by taking photos of the personal items, that the photos were the equivalent of keeping a written inventory in the matter before me, and were useful in determining the condition of the items before being moved to storage.

Based on the above, I am satisfied that the landlord has stored all personal items that remained in the rental unit when it was abandoned by the tenant. Therefore, **I do not** find that the landlord requires an order directing the return of the tenant's personal property.

I will now deal with the tenant's and landlord's monetary claims. For ease of reference, I will use item numbers from the tenant's and landlord's itemized list of claims located on pages 4, 6 and 7 of this decision.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Tenant's Claim: Items 1 through 7

Item #	Description	Amount
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1	Computer	\$2,300.00
2	Leather jacket	\$850.00
3	Yamaha keyboard	\$1,200.00
4	Cash box (contents)	\$800.00
5	Ornaments	\$300.00
6	Art work	\$350.00
7	Rent and deposits	\$858.33
	TOTAL	\$6,658.33

Tenant's Items 1 through 6

I find that items 1 through 6 being claimed by the tenant fail to meet the test for damages or loss. The tenant has not met the burden of proof that the landlord breached the *Act*. The tenant has also failed to prove the landlord stole or damaged any of his personal items. **I find** it more likely that the person the tenant he gave his keys to, left the rental unit unlocked, allowing access by other parties.

I find that the landlord did what was reasonable to minimize any further loss to the tenant after the tenant ended his tenancy through his own actions, by changing the locks of the rental unit, once it the landlord was aware that the rental unit was left unsecure. The landlord placed the personal items of the tenant into storage as required under section 25 of the regulation.

If the tenant's items were broken or missing, which the tenant has failed to prove by failing to provide photos or other supporting evidence, I find it more likely that the items were either already broken or were missing at the time the landlord's entered the rental unit.

I afford no weight to the typed statements submitted in evidence by the tenant as I find they do not prove that the landlord breached the *Act*. Furthermore, none of the persons who typed the statements were available during the hearing.

Therefore, based on the above, **I dismiss** items 1 to 6 of the tenant's claim due to insufficient evidence, without leave to reapply.

Tenant's Item 7

Item 7 relates to the tenant's claim for the return of his pet damage deposit and security deposit, return of a portion of June 2012 rent, and compensation for July 2012 based on the 2 Month Notice issued by the landlord.

Regarding the 2 Month Notice issued by the landlord on May 15, 2012 with an effective vacancy date of July 31, 2012. I find that once the landlord issued that 2 Month Notice, the tenant was entitled to the equivalent of one month's rent as compensation. As the parties agreed that June 2012 rent was paid by the tenant, **I grant the tenant \$415.00** as compensation for June 2012 rent based on the 2 Month Notice.

I **do not** find that the tenant is entitled to any compensation for July 2012 as the tenancy ended due to the actions of the tenant by abandoning the rental unit.

I will deal with the security deposit and pet damage deposit later in this decision.

Landlord's Claim: Items 1 through 4

Item #	Description	Amount
1	Hauling charge of tenant's personal items	\$120.00
2	Storage locker costs to store tenant's personal items	\$186.66
3	Suite cleaning	\$175.00
4	Cost to replace damaged caretaker door kicked in by tenant	\$1,187.31
	TOTAL	\$1,668.97

Landlord's Items 1 and 3

The landlord failed to submit evidence such as receipts or invoices to support items 1 and 3. As a result, I find the landlord has failed to meet the burden of proof to prove the value associated with the costs being claimed. As a result, **I dismiss** these two items from the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's Items 2 and 4

The landlord has claimed \$186.66 for item 2 and \$1,187.31 for item 4. Item 2 relates to the storage locker costs to store the tenant's personal items. The landlord submitted evidence to support the storage locker costs consisting of a receipt and storage locker rental agreement.

Item 4 relates to the cost to replace the damaged caretaker door kicked in by the tenant. The tenant disputed that he kicked in the door. The landlord submitted evidence of the cost of the door by providing the invoice, a statement from the caretaker describing how

the tenant kicked in the door and proceeded to assault her, and court documents supporting that the tenant was charged with Assault and Mischief. The offence date of June 20, 2012 from the court documents matches the date as described by the caretaker. I reject the tenant's evidence as he could not recall specific dates and based on the balance of probabilities, I find his credibility lacking by denying that he kicked in the door of the caretaker.

I find it unreasonable that the tenant would be charged with Assault and Mischief and placed on a bail order with conditions not to contact the caretaker directly or indirectly, and not to attend the rental unit building unless the police had a reason to arrest him, and Crown Counsel had enough evidence to approve the criminal charges against the tenant. The tenant failed to provide any evidence that the criminal charges were dismissed or otherwise not currently before the courts. Therefore, I prefer and accept the testimony of the landlord that the caretaker's door was replaced due to the tenant damaging the door on the balance of probabilities.

Based on the above, **I find** the landlord has met the burden of proof to support items 2 and 4 of their claim. Therefore, **I find** the landlord has established a monetary claim of **\$1,373.97** comprised of \$186.66 for storage locker fees and \$1,187.31 for the cost to replace the caretaker's door.

I offset the amount owed to the tenant of \$415.00 described above, plus the security deposit of \$207.50 and pet damage deposit of \$92.50 for a total of \$715.00 against the amount owing to the landlord in the amount of \$1,373.97 for a balance owing by the tenant to the landlord in the amount of **\$658.97**.

As the landlord was successful with a majority of their monetary claim, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**. **I find** the landlord is entitled to a monetary order pursuant to section 67 of the *Act* in the amount of **\$708.97** comprised of \$658.97 as indicated above, and the \$50.00 filing fee. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss items 1 through 6 of the tenant's application in full due to insufficient evidence, without leave to reapply.

I grant the tenant \$415.00 for item 7 as the equivalent of June 2012 rent due to the 2 Month Notice issued by the landlord on May 15, 2012.

I dismiss items 1 and 3 of the landlord's application due to insufficient evidence, without leave to reapply.

I grant the landlord a monetary order in the amount for items 2 and 4 in the amount of \$708.97 as indicated above. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 19, 2012

Residential Tenancy Branch