



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 659804 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act, (the “Act”), for a monetary order for money owed or compensation for damages, and for the return of the security deposit.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matters

At the outset of the hearing the landlord’s agent (the “Landlord”) stated that the respondent JM, is not the landlord and the style of cause should be amended to reflect the proper name of the landlord. I find the amendment appropriate, JM was removed as a respondent, and the correct landlord was added.

The landlord confirmed receipt of all evidence filed with the tenant’s application. The landlord did not receive the late evidence submitted by the tenant. The tenant confirmed they did not provide a copy of the late evidence to the landlord.

Therefore, as the landlord was not provided with a copy of the tenant’s evidence filed on September 29, 2015, I find it appropriate to exclude that evidence from the hearing.

Issues to be Decided

Is the tenant entitled to a monetary order for damages or compensation?
Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on April 29, 2015. Rent in the amount of \$600.00 was payable on the first of each month. The tenant paid a security deposit of \$300.00. The tenancy ended on May 1, 2015.

The tenant claims as follows:

a.	Loss of personal belongings	\$3,139.00
b.	Return of security deposit	\$ 220.00
	Total claimed	\$3, 359.00

The tenant testified that on May 1, 2015, they received \$80.00 from the landlord as they were going to use the money to take the bus to a funeral; however decided it would be best to use the money for gas instead. The tenant stated that they also received a job opportunity on the same day that they could not pass up.

The tenant testified that they informed the landlord that they were moving out and would get a U-Haul to move their belongings.

The tenant testified that the landlord and the maintenance person then decided on their own accord to move all their belongings out of the rental unit and onto the lawn. The tenant stated that the U-Haul did not show up. The tenant stated that they asked the landlord to keep their belongings inside the rental unit, but they refused. The tenant stated that they could not find help that night and their belongings stayed outside and over half of their belongings were stolen.

The tenant testified that they have provided a list of the items missing. The tenant stated that the price listed are retail values of when the items were purchased, as an example the purse valued at \$160.00 was purchased in 2009. The tenant seeks compensation for loss of items in the amount of \$3,359.00. Filed in evidence is a list of items said to be missing.

The advocate stated that the landlord failed to comply with the provisions of abandonment of the tenant's personal property to ensure it is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

The tenant testified that they did not provide the landlord with a forwarding address prior to filing their application and the address in their application is no longer correct. The tenant would not provide a new forwarding address at the hearing.

The landlord testified that they did receive a security deposit from the tenant. The landlord stated that on May 1, 2015, the tenant insisted that they were going to move out of the rental unit and wanted \$80.00 to go get a U-Haul, which they provided the tenant with the money from the security deposit.

The landlord testified that it was only at the tenant request that they moved the tenant belongings while the tenant went to get a U-Haul. The landlord stated that when the

tenant came back after an hour or so they did not have a U-Haul and were asking for more money, which they refused to provide at that time.

The landlord testified that the tenant ended the tenancy and left their own belongings outside. The landlord stated that they were not obligated to reinstate the tenancy. The landlord stated that they also saw the tenant the next day place a large amount of belongings in the garbage and taking the balance of their belongings.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 24 (1) of the Act, 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.

In this case, both parties have provided a different version of events. However, I find the tenants evidence conflicting as they first indicated that they borrowed \$80.00 for a bus ticket, then they decided it was to be used for gas and then later it was to be used for a U-Haul. The landlord version was that the only money given to the tenant was for the rental of a U-Haul, which they help the tenant move their belongings at their request while the tenant went to get the U-Haul.

I accept the landlord's version that the tenant ended the tenancy on their own accord as the evidence of the tenant was that they had a funeral to attend and a job opportunity that they could not refuse. I also find on the balance of probability that the tenant ask the landlord to help them move their belonging as it would be a reasonable request when considering the above facts.

Further, I find the evidence does not support the tenant abandoned their personal property as there was no evidence that the landlord received any oral or written notice that the tenant was not returning. In this matter the tenant was aware their belonging were outside and when the tenant returned without the U-Haul, they knowing left their belonging outside and unattended, which I find unreasonable to blame the landlord for their own actions.

Furthermore, even if I accept the landlord breached the Act, which I do not, when determining damages for a breach, the normal measure is the market value of the lost articles at the time of its loss. The market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being compelled to buy or to sell and both having reasonable knowledge of relevant facts, such as age and condition.

In this case, the tenant provided no evidence of the market value of any of the lost articles, except a list. While I accept the evidence of the tenant that they paid in the year 2009, \$160.00 for a purse, that was the retail value in 2009 and not the market value of the purse of similar age in 2015.

In light of the above, I dismiss the tenant's application for money owed or compensation under the Act due to insufficient evidence.

Security deposit

In this case, the tenant acknowledged that they did not provide the landlord with a forwarding address prior to filing their application and the address in the application is no longer correct. Although the landlord indicated they would return to the tenant the balance of their deposit of \$220.00, the tenant did not provide an address for them to do so.

Therefore, I find this portion of the tenant's application is premature. Since the tenant is required to provide a forwarding address to the landlord in accordance with section 38 of the Act. Should the tenant provide that address and the landlord does not return the balance to the tenant as indicated, the tenant is at liberty to reapply.

Conclusion

The tenant's application for a monetary order for compensation for loss or damages is dismissed.

The tenant's application for return of the security deposit is dismissed with leave to reapply.

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 09, 2015

Residential Tenancy Branch

