



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      AAT O RR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The wife of the named respondent ("the respondent") attended this hearing on the respondent's ("landlord") behalf. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The applicant/tenant testified that he has vacated the rental unit and therefore withdrew his application pursuant to section 70 and sought to proceed with his application for a rent reduction. He also sought to amend his application to include recovery of his security deposit and his rent from May 2016. The tenant's application to amend was submitted prior to the hearing and served to the respondent. Therefore, I will consider his further requests made on amendment to receive compensation for property that he claims the landlord disposed of and for his "unlawful eviction".

### Preliminary Issue: Jurisdiction of Residential Tenancy Branch

The respondent attended the hearing. She submitted that she and her husband are not the appropriate parties to address this matter as they are not landlords. Under the definitions section of the Act, a "landlord" includes,

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

The respondent testified that she and her husband occupy the upstairs in the residential premises. Both parties agreed that the rental unit that is the subject of this application is downstairs and a distinct rental unit from the respondent and her husband's unit. The applicant/tenant testified that he agreed to rent the downstairs unit for \$450.00 payable each month. The applicant/tenant testified that he provided the respondent's husband with a \$225.00 security deposit. The respondent agreed with the applicant/tenant's testimony that the amount owed by the applicant/tenant to her husband was set at \$450.00 and that the applicant/tenant provided a \$220.00 security deposit. She maintained that the rental was merely for storage.

Given the diverging testimony of the parties, an initial determination regarding the nature of the agreement between the parties depends on a determination of the credibility of the parties. In addition to the manner and tone (demeanour) of the parties' evidence, I have considered their content, and the consistency of the testimony.

The applicant/tenant's demeanor during the hearing has convinced me of his credibility. He answered all questions asked of him consistently, not wavering in his version of events. In giving his evidence, the applicant/tenant was generally calm and candid. The tenant's application and the attached documents included applications to amend. These applications show the tenant's escalating concerns regarding this tenancy. I also note that the applicant/tenant submitted copies of text messages as part of his evidence. These text messages between the applicant/tenant and respondent/landlord did not reference an agreement for storage. Instead, they reference his behavior at the premises. A letter submitted from the landlord to the tenant submitted into evidence refers to the tenant's failure to clean up after his dog and that he must "move out".

In receiving testimony from the respondent/landlord, I found that her testimony varied and was logically inconsistent. She testified that the tenant paid a security deposit but

disputed that this agreement was intended as a tenancy. She testified that the tenant was given keys to an exterior door at the home but that the respondents did not expect that he would reside in the rental unit. She testified that his dog created a mess in the yard and that they asked the tenant to address this issue but it was not their intention to have him reside in the unit.

Based on my finding that the tenant was more reliable in his testimony than the landlord, I accept the tenant's testimony at this hearing and I find that the respondent and her husband are landlords who occupy the upper, rental unit within the residential premises and have exercised the rights of a landlord in renting a portion of the lower suite to the tenant.

#### Issue to be Decided

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided or any "other" remedy under the Act?

#### Background and Evidence

Both parties confirmed that no written tenancy agreement exists between the two parties. The applicant testified that he made a verbal tenancy agreement with the respondent whom he believed to be the landlord. He testified that he agreed to rent a room within the bottom floor of the residence with access to the common bathroom and living area, to be shared with a second tenant. The applicant testified that the other "tenant" did not move in during his time in the rental unit but that the unit was a mess and he complained. The landlord testified that she and her husband rent the upstairs of the residence and provided a storage room only, with separate access, to the applicant.

The tenant testified that he began residing within the residential premises on approximately May 4, 2016. The tenant testified that he vacated the unit on May 8, 2016 when the landlord would not allow him into the residence. The applicant/tenant testified that he was advised by the respondent's husband that they owned the property. The respondent testified that she did not own the property nor is she related to the person who owns the property. She would not disclose information regarding her tenancy or provide a copy of her residential tenancy agreement with the owner.

The respondent testified that her husband rented a storage unit to the applicant/tenant and that he moved in to the unit contrary to the agreement. Neither party was able to

submit a residential tenancy agreement as they indicated that all agreements were made verbally.

The landlord confirmed that her husband received \$450.00 and \$220.00 from the applicant. She testified that this amount was for 1 month of storage and a security deposit. The tenant testified that this amount was for 1 month's rent and a security deposit. She testified that she and her husband have retained the money paid by the applicant. The applicant submitted a copy of receipts for these two amounts.

The applicant submitted as evidence of his loss at the end of this tenancy. He submitted an estimate for the cost of a television dated May 11, 2016 and a receipt from a furniture company dated May 11, 2016 for a coffee table and sofa. He testified and provided supporting documents to indicate that he was advised by text message that his belongings had been placed outside the residence, that he was forced to move his belongings and to vacate the residence without notice.

### Analysis

The definition section of the *Residential Tenancy Act* describes a tenancy as “a means a tenant's right to possession of a rental unit under a tenancy agreement”. I find, based on the testimony of the applicant at this hearing that a tenancy agreement was created between the parties. To clarify, the *Act* describes a tenancy agreement as “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”.

The arrangement described by the parties provides all the basic elements of a tenancy agreement including the provision of a security deposit, which is acknowledged by the respondent. I accept the tenant's testimony, supported by his receipts, that he paid the respondents \$450.00 and a security deposit in the amount of \$220.00. I find that the tenant did not receive access to the rental unit until May 4, 2016 (4 days after the start of his tenancy). I find, accepting the testimony of the tenant, that the tenancy was ended without notice by the landlords after 4 days.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has shown, in his testimony and supporting evidence that the landlords are responsible for his losses. I find that the tenant has shown losses as follows,

<b>Item</b>	<b>Amount</b>
Rent (minus payment for 4 days)	\$390.00
Return of Security Deposit	220.00
<b>Total Monetary Order</b>	<b>\$610.00</b>

I find that the tenant is entitled to be reimbursed as indicated above. I find that the tenant is not entitled to the cost of a moving truck as he did not provide a receipt to show this cost. I find that there was insufficient evidence that the tenant left food within the unit. I find that the landlord is not responsible for damage to the tenant's sofa, coffee table or television, gas or the liquor that he included in his application for monetary compensation.

However, I do find that the tenant for losses of items that he uses to care for his dog, loss of miscellaneous items discarded by the landlords by placing them in the yard as well as general compensation for the circumstances he was forced to address. This will be addressed in the form of nominal damages.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlords failed to honour the residential tenancy agreement and their obligations under the *Act*. Therefore, I find that the tenant is entitled to a nominal damage award in the amount of \$625.00 as well as his out of pocket expenses, return of his security deposit and recovery of his rental amount.

Conclusion

I issue a monetary order to the tenant as follows,

<b>Item</b>	<b>Amount</b>
Rent (minus payment for 4 days)	\$390.00
Return of Security Deposit	220.00
Nominal Damages	625.00
<b>Total Monetary Order</b>	<b>\$1235.00</b>

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: June 17, 2016

---

Residential Tenancy Branch