



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC O RPP

Introduction

This review hearing was convened in response to a review consideration decision rendered pursuant to section 79 the *Residential Tenancy Act* (the “Act”) on February 9, 2017 to reconsider the Monetary Order issued to the tenant, following a hearing on January 17, 2017.

In the original decision of January 17, 2017, the arbitrator issued a Monetary Order of \$18,617.17, the amount identified as owing to the tenant for loss of personal property. The landlord was granted a review hearing as it was determined in the review decision of February 9, 2017 that;

The Landlord “did not receive dispute resolution package by registered mail or otherwise notifying the organization of the hearing.”

In the decision the Arbitrator noted that the Tenant testified that the dispute resolution package was served to the Landlord by registered mail on December 27, 2016. There is no indication that the Tenant cited a Canada Post tracking number that corroborates this testimony. There is no Canada Post documentation in the file that corroborates this testimony.

As there is no evidence to corroborate the Tenant’s testimony that the dispute resolution package was served by registered mail or to refute the Landlord’s declaration that it was not received, I find it entirely possible that the Landlord did not receive the dispute resolution package. I find it entirely possible that both parties are being truthful and that the package was simply lost or incorrectly delivered by Canada Post.

During the course of this Review Hearing, the tenant stated that he had sent the landlord a copy of the Tenant’s Dispute Resolution package by way of Registered Mail on December 27, 2016. The tenant provided the hearing with the Canada Post tracking number. The tenant had also been asked to fax in a copy of this receipt following the conclusion of the hearing. This was received on March 3, 2017.

The landlord stated that he had not received this package.

A copy of the receipt faxed to the Review Hearing on March 3, 2017 does contain a tracking number; however, despite several attempts by both the Arbitrator and an information officer, no package could be found on the Canada Post website containing tracking number: RN 210 325 903 CA or RN 127 724 399 CA as displayed on the receipt and as testified to by the tenant.

On February 23, 2017 the landlord received a Notice of Review Hearing from the *Residential Tenancy Branch*. On February 24, 2017 the landlord personally served this notice on the tenant. The tenant acknowledged receipt of this notice.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Is the tenant entitled to a Monetary Order for a breach of the *Act*?

Background and Evidence

The tenant is seeking a Monetary Order of \$23,000.00. This amount reflects a number of items that were taken from his room along with damages related to his dog being seized by animal welfare.

Specifically the tenant is seeking compensation for the following:

| Item: | Amount |
|-------------------------------|---------------|
| 46" Television | \$377.99 |
| Video Game Console w 10 Games | 1,344.00 |
| Video Game Console w 5 Games | 754.00 |
| 12" Subwoofer | 254.00 |
| Headphones | 219.00 |
| 1979 Hockey Cards | 1,254.50 |
| Mountain Bike | 359.00 |
| Cable Box | 434.67 |
| 22K Gold bracelet | 2,449.99 |
| 18K Gold bracelet | 1,249.99 |
| 18 Gold chain | 1,399.99 |
| Designer Watch | 1,184.00 |
| Carbon Fiber Sportbike | 1,449.99 |
| Laptop | 349.00 |

| | |
|-------------------|--------------------|
| Cellphone | 479.00 |
| High end clothing | 3,000.00 |
| Sunglasses | 209.05 |
| 55" television | 1,799.99 |
| | |
| Total | \$18,568.16 |

In addition to the above cited figure of \$18,568.16, the tenant is seeking \$4,431.84 for the loss of his dog.

On June 30, 2016 the tenant was taken to the hospital. Due to the severity of his injuries the tenant was kept in the hospital for several days. While the tenant was in the hospital, he alleges that his room was entered into a number of times and a large number of his items were stolen. In addition, the tenant stated that while he was recovering in the hospital, staff at the property failed to adequately secure his room, and staff illegally entered his suite and disposed of his personal property. The tenant maintained that a second incident concerning loss to his personal property occurred following his release from the hospital on July 11, 2016.

The landlord maintained that they took all necessary steps to secure the tenant's room and the missing goods were the result of a break and enter that was captured on the building's security camera on approximately July 2, 2016. Building manager, ND testified that he caught two men attempting to break into the tenant's room on July 4, 2016 and confronted them. This incident led ND to review security footage to determine whether other incidents had occurred. ND testified that this review of the security footage led to his discovery of the July 2, 2016 thefts.

Analysis – Monetary Order

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. In this case, the onus is on the tenant to prove his entitlement to his claim for a monetary award.

Testimony was provided at the hearing from MC, manager of housing for the landlord which explained that the building was outfitted with electronic doors that locked automatically once closed. Like a high rise building, only a fob key would grant access to the unit. It is therefore reasonable to conclude that the landlord took all necessary steps to secure the rental unit by simply closing the door upon exiting the suite. No physical locking of the rental unit was required.

During the course of the hearing the landlord stated that he had evidence of people breaking into the rental unit. I found the testimony of ND, the building manager to be reliable and worthy of significant weight. He stated that on July 4, 2016 he confronted two men attempting to illegally gain access to the tenant's unit. This incident caused ND to take two actions. The first was the installation of anti-pry strips on the tenant's door, as well as a review of security footage. On the security tapes dated July 2, 2016 ND viewed people breaking into the rental unit.

Both the tenant and the landlord agreed that on July 11, 2016 the tenant requested assistance from the Home Support staff employed by the landlord. The landlord explained that these people are provided to residents as cleaners. Under oath, the tenant testified that at the time he requested the Home Support staff, the majority of his large items had already disappeared from the room. Despite this, the tenant maintained an additional \$3,000.00 worth of clothing was thrown out by these cleaners who cleaned his room while he was not present.

MC, manager of housing stated that he could not comment directly on any actions of the Home Support workers. However, he did state that their sole duty is to clean the apartment units. He stated that these people do not throw items away.

While I find the tenant to be a credible witness who most likely did suffer the loss of the items listed, I am not convinced that the actions of the landlord led directly to his loss. The landlord took adequate steps to protect the tenant's items while he was recovering in hospital from his injuries. Specifically, the landlord entered the rental unit twice without the permission of the tenant. The first was in the presence of the police department so that his dog could be retrieved. The landlord explained that animal control was called by the police department as the dog was barking. The second entrance of the rental unit was to install a security feature on the door following a break-in to the rental unit on July 2, 2016

The tenant maintained that the Home Support staff disposed of his items without his consent. While the tenant was not present during their cleaning he did request it and had knowledge that persons would be entering his suite. Furthermore, the landlord's

manager, MC, stated that at no point did he look to evict the tenant and would therefore have no reason to dispose of his items. He continued by noting nobody would direct the cleaners to do so. The landlord's representatives testified that they continue to house the tenant in a new unit.

I am very sympathetic to the tenant for his loss of his dog, but I cannot award the tenant a monetary award for a lost animal when the landlord took no actions to trigger events leading to its seizure. All evidence presented at the hearing focused on the fact that the police department and the animal control officers made the decisions concerning the dog.

I dismiss the tenant's Monetary Order. As such, the tenant must bear the cost of his own filing fee.

Conclusion

The tenant's application for a Monetary Order is dismissed.

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: March 9, 2017

Residential Tenancy Branch