



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This was an application by a former tenant for compensation representing the value of her personal property stolen by a former tenant and neighbour. Only the tenant attended the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation and if so how much?

Background and Evidence

The applicant and former tenant testified that she handed the landlord a copy of this application and the evidence on January 23, 2017. I therefore find that the landlord has received the documents on January 23, 2017 and was therefore served in accordance with the Act.

Based upon the evidence of tenant I find that this month-to-month tenancy started on November 24, 2016 and ended on January 15, 2017 when the Tenant moved out. Rent was \$ 1,300.00 per month payable in advance on the 1st day of each month and an additional \$ 100.00 amounting to \$ 250.00 for the pet which I conclude is deemed to be the pet deposit. The tenant did not pay any security deposit.

The tenant testified that on January 10, 2017 her unit was broken into by someone who had a key as there was no evidence of forced entry. The landlord admitted that she saw K a former tenant, leaving the applicant's unit carrying a lot of "stuff" but did not stop her as the landlord thought the applicant was home. The landlord admitted that K had a master key to all the units and that the landlord had reported this to the police and given K a Notice to End the Tenancy before the break-in had occurred. The applicant testified that after the break-in the landlord reactivated a previously inoperable video surveillance system. The applicant testified that most of her belongings were stolen and the most valuable possessions: jewellery and cash were normally kept in a unique coffee can. The applicant testified that after K vacated the unit she found the empty coffee can in K's unit.

The applicant submitted that her loss resulted directly from the landlord's negligence. The applicant itemized her loss as follows:

Gold chain	\$ 500.00
Two sterling silver rings	\$ 500.00
Various household items	\$ 200.00
Cash	\$ 100.00
Makeup	<u>\$ 200.00</u>
Total:	<u>\$ 1,500.00</u>

Analysis

To claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the claimant must provide:

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or tenancy agreement

I find that the applicant was credible witness. She gave her evidence in an unembellished and truthful manner. I accept her evidence.

I find based upon the evidence of the applicant and in absence of any evidence from the landlord, that the loss of the applicant was occasioned directly as a result of the landlord's negligence in that after the discovery that K had a master key: she did not change the locks to all the units, not notify the other occupants that they were at risk, did not stop K in the process of removing property from the applicant's unit and in not repairing the video surveillance system until after the break-in.

The applicant produced a detailed list of her claim in which she valued the estimated replacement cost of each item. Those amounts were not contested by any evidence to the contrary. In fact the landlord failed to attend the hearing. In *Powell v. British Columbia (Residential Tenancy Branch)* a 2015 decision of the BC Supreme Court, the Honourable Madam Justice Bruce, considered how much scrutiny an arbitrator must give to the stated quantum of loss in an unopposed application.

[60] Addressing the quantum of loss, Arbitrator Molnar articulated the undisputed facts that Ms. Blais had lost an opportunity to sell her trailer for \$25,000 and later mitigated her loss by selling it for \$5,000. In addition, he referred to other expenses incurred as a result of the unlawful eviction notice, including the cost of removing the structures as ordered by the landlord, the legal fees expended in regard to the removal of these structures, and the filing fee. **Assessing the loss was a simple mathematical calculation based on the proven facts.** (My emphasis added)

As I have already found that the applicant is a credible witness I accept her calculation of her loss at the amount she claimed to be \$ 1,500.00. The applicant will have a monetary order in that amount.

The tenant is cautioned to consider section 38 of the Act regarding the pet deposit.

- 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
- (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
- (a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

Conclusion

In summary I ordered that the respondent pay to the applicant the sum of \$ 1,500.00 in respect of this claim. I granted the applicant a monetary Order in that amount. This decision and Order must be served on the landlord. If the amount is not paid, the order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have not made any order as to the reimbursement of the filing fee.

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 13, 2017

Residential Tenancy Branch