



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, O

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$24,000
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on March 24, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant moved into the rental property approximately 10 years ago. She moved to this rental unit on July 1, 2009. The present rent was \$1410 per month plus \$100 for parking. The tenancy ended on April 30, 2017.

The landlord testified they have returned the security deposit to the Tenant. The tenant testified she has not yet received it. Presumably it is in the mail.

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$24,000. The tenant rented a storage locker which was part of the tenancy agreement. The building manager at the time was conducting an audit of the storage lockers. In the process the Tenant's belongings were removed and disposed of. The tenant seeks compensation for the loss of these belongings many of which were family keepsakes, collectibles and memorabilia spanning generations of her family which have great sentimental value to her. However, the tenant was unable to provide much in the way of evidence to prove her quantum of loss.

Law

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infringement of a legal right.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The landlord shall pay to the Tenant the sum of \$3100.
- b. This is a full and final settlement of all claims made by the Tenant against the Landlord in this Application for Dispute Resolution.
- c. The parties have specially excluded from this settlement and the tenant retains the right to claim against the landlord the following:
 - o The right of the tenant to file a claim for the security deposit if it is not received by the tenant.
 - o The right of the tenant to file a claim against the landlord for one half of a month rent because the landlord took possession earlier than the end of the tenancy to commence renovations.
 - o The right of the tenant to claim \$200 for loss of some of her possession that occurred as after the landlord regained possession and started renovations.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3100. All other claims in this application are dismissed without leave to re-apply.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$3100.

This decision is final and binding on the parties.

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: May 09, 2017

Residential Tenancy Branch