



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RPP, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the tenant's personal property returned to the estate.

The hearing was conducted via teleconference and was attended the tenant's agent; the landlord and his agent.

At the outset of the hearing, the agent for the tenant confirmed that the tenant had passed away and she represented the estate. I note the definition of tenant, under Section 1 of the *Residential Tenancy Act (Act)* includes the estate of a deceased tenant.

At the outset of the hearing the parties confirmed that the personal property that the agent wants returned are no longer available to be returned. I advised the agent for the tenant that as she had only applied for an order to have the items returned and there was no indication on her Application for Dispute Resolution that she was seeking compensation for any items that we could not proceed, based on her Application. I also advised that if she sought compensation she should file a new and separate Application for Dispute Resolution seeking it.

However, prior to closing the hearing the landlord offered that he was prepared to address all matters relating to the end of this tenancy in this hearing as he did not wish to have to delay any proceedings so matters could be resolved.

As a result, I have allowed the tenant's agent to amend her Application to include compensation for the tenant's personal possessions and the disposition of the security deposit.

### Issue(s) to be Decided

The issues to be decided are whether the tenant's estate is entitled to a monetary order for compensation for non-returned personal property and return of the security deposit, pursuant to Sections 26, 37, 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlords submitted the tenancy began with the tenant A.B. on April 21, 2017 for a monthly rent of \$750.00 due on the 1<sup>st</sup> of each month with a security deposit of \$350.00 paid. The landlord provided that on or about May 23, 2017 a woman, E.D., began to stay in the rental unit, he understood E.D. to be the tenant's fiancée.

The parties agreed the tenant passed away on May 25, 2017.

The landlord submitted that a couple of days before June 1, 2017 they agreed to allow E.D. take over the tenancy and that the security deposit paid by the tenant would be transferred to her tenancy.

The tenant's agent testified that the landlord refused to allow access to the rental unit to anyone representing the tenant's estate. The agent submitted that she was trying to be able to go through and remove the tenant's belongings and specifically was looking to recover a laptop computer; several computer games; a goPro camera; a grinder for sharpening chainsaws; and business records. The agent estimates these items total \$3,900.00 in value but has provided no documentary evidence to support these values.

The landlord submitted that they had informed the tenant's agent that they had no problem with her accessing the rental unit but that she needed the E.D.'s agreement as well.

The agent submitted copies of her correspondence to the landlord advising of these issues and the landlord's response dated August 22, 2017. This letter advises the agent that the items she is seeking had not been found in the rental unit but that after he "ejected" the tenant's "self-described fiancée" from the property he had to clean up and they had the rest of the tenant's belongings.

Both parties suspect that E.D. either took possession of the items sought by the agent or that she sold them through social media.

The landlord submitted that E.D. did not pay any rent during her stay in the rental unit and as such they have applied the security deposit to her debt of unpaid rent.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 44 of the *Act* stipulates that a tenancy ends under the following circumstances:

- (a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - (i) Section 45 [tenant's notice];
    - (i.1) Section 45.1 [tenant's notice: family violence or long-term care];
  - (ii) Section 46 [landlord's notice: non-payment of rent];
  - (iii) Section 47 [landlord's notice: cause];
  - (iv) Section 48 [landlord's notice: end of employment];
  - (v) Section 49 [landlord's notice: landlord's use of property];
  - (vi) Section 49.1 [landlord's notice: tenant ceases to qualify];
  - (vii) Section 50 [tenant may end tenancy early];
- (b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) The landlord and tenant agree in writing to end the tenancy;
- (d) The tenant vacates or abandons the rental unit;
- (e) The tenancy agreement is frustrated;
- (f) The director orders that the tenancy is ended.

Residential Tenancy Policy Guideline #34 states a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into.

From the testimony of both parties, I find that a tenancy existed between the landlord and the tenant A.B. I find that on May 25, 2017 after the tenant A.B. passed away the tenancy ended as it was frustrated. I also find that E.D. was not a party to that tenancy. While I accept that the landlord entered into a new tenancy agreement with E.D. I find that this tenancy was completely unrelated to the prior tenancy with A.B. that became frustrated on May 25, 2017.

Section 26 (3) of the *Act* states that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property. As E.D. was not a party to the tenancy with A.B, in these circumstances, I find the only

person who could represent the tenant A.B.'s affairs relating to the tenancy would be those who became responsible for his estate.

Based on the above, I find the landlord had no authority to allow the E.D. to take control of the tenant A.B.'s personal property. Furthermore, I find the landlord had no authority under the *Act* to transfer the tenant A.B.'s security deposit to the tenancy between the landlord and E.D.

As such, I find the landlord has failed to comply with the requirements of the *Act* and the as a result, I find the estate of the tenant has suffered a loss in relation to the specific items identified by the tenant's agent.

However, the tenant's agent has provided no documentary evidence to establish the value of the items claimed and I cannot, therefore, determine if the value for the specific compensation of \$3,900.00 sought is reasonable.

Residential Tenancy Policy Guideline #16 states 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. As noted above, It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

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 infraction of a legal right.
- "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

While I have found above that the agent for the tenant has failed to establish the value of the loss for the items identified, I find that the actions of the landlord have resulted in an infraction of the tenant's legal right and I can grant nominal damages. In this, case, I grant the tenant \$1,000.00, primarily based on the cost to replace computer and camera equipment.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord wrote a letter to the tenant's agent on August 22, 2017, I find, on a balance of probabilities, that the landlord had the tenant's agent forwarding address by that time. As noted above, I have found the landlord did not have authority to transfer this security deposit to the tenant E.B's tenancy.

As such, I find the landlord had until September 6, 2017 to either return the tenant's deposit to the agent or file an Application for Dispute Resolution seeking to claim against the deposit. As there is no evidence before me that the landlord did either, I find the landlord failed to comply with their obligations under Section 38(1) and the tenant is entitled to double the amount of the security deposit held, pursuant to Section 38(6).

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,700.00** comprised of \$1,000.00 compensation for personal property and \$700.00 for double the amount of the security deposit held.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 14, 2017

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Residential Tenancy Branch