



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF MNDC RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlords did not. I waited until 9:43 A.M. to enable the landlords to participate in this scheduled hearing for 9:30 A.M. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlords with the application for dispute resolution hearing package ("Application") and evidence by way of registered mail on September 1, 2017. The tenant provided a tracking number in his evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed served with the Application and evidence on September 6, 2017, five days after mailing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Preliminary Issue - Provision of Forwarding Address

The tenant testified during the hearing that he had sent a text message to the landlords on June 22, 2017 requesting the return of his security deposit and belongings. The tenant provided the landlords with his phone number and temporary address.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

The landlords did not attend the hearing, and the tenant did not provide any witness testimony or any kind of confirmation that the landlords had received the forwarding address in writing from the tenant. I find that the tenant did not provide sufficient evidence to support that the landlords were provided with his forwarding address in writing, as required by section 38 of the *Act*.

As the tenant was unable to provide sufficient evidence to demonstrate that the landlords were provided with his forwarding address in writing, I dismiss the tenant's application for the return of his security deposit with leave to reapply.

The tenant must provide his forwarding address to the landlords in writing, and the landlords must, within 15 days of the receipt of that address, either return the tenant's security deposit, or make an application for dispute resolution. If the landlords fail to comply with section 38 of the *Act*, the tenant may reapply. Liberty to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the tenant entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to return the tenant's personal property?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlords did not attend the hearing. This month-to-month tenancy began on June 1, 2017, with monthly rent set at \$1,100.00. The landlords had collected a security deposit of \$550.00 from the tenant, and still continue to hold that deposit. This tenancy ended on June 22, 2017 when the locks were changed by the landlord.

The tenant testified that the landlords kept all his belonging without his consent. The tenant is requesting the return of his personal property, and a monetary order in the amount of \$10,000.00 in compensation for his missing items as set out in the table below:

Item	Amount
Snowboards x 4	\$4,000.00
Snowboarding Gear	600.00
Air Intake	800.00
Clothing	2,000.00
Furniture	1,000.00
Items in Kitchen	1,000.00
Model Cranes	200.00
Furnishings and Art	400.00
Total Monetary Order Requested	\$10,000.00

The tenant testified that the monetary value provided for his application were estimates, and the tenant did not provide any receipts or supporting documents to support the value of the missing items.

Analysis

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 or 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, on a balance of probabilities, that the landlord caused her a loss of her personal property and the amount of such loss.

The tenant seeks a monetary order for the losses that he incurred as a result of the landlords' actions. The tenant seeks \$10,000.00 total for these losses.

Although the tenant provided an itemized list of the items he was missing, with their estimated value, the tenant did not provide any further documentation such as photos, receipts, invoices,

or witness testimony to support his losses, and the value of these losses. Although I sympathize with the tenant that he lost his personal belongings, I find that the tenant failed to provide sufficient evidence to demonstrate what items the landlords are in possession of. In the absence of this supporting documentation, I am unable to determine what items the landlords still have, and on this basis I dismiss the tenant's application for the return of his personal property and monetary compensation without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in his application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

The tenant's application for the return of his security deposit is dismissed with leave to reapply.

The remainder of the tenant's application is dismissed without leave to reapply.

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: December 22, 2017

Residential Tenancy Branch