



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDCT RPP MND MNR

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”):

The landlord sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- a return of the filing fee pursuant to section 72 of the *Act*;
- a monetary order for loss or other money owed pursuant to section 67 of the *Act*; and
- an Order directing the landlord to return her personal property pursuant to section 65 of the *Act*.

Both the landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their testimony and to make submissions. The landlord was represented at the hearing by his agent (the “landlord”), while the tenant represented herself at the hearing.

Both parties acknowledged receipt of each other’s applications for dispute resolution and evidentiary packages.

Issues

Is either party entitled to a monetary award?

Is either party entitled to a return of the filing fee?

Should the landlord be directed to return the personal property to the tenant?

Background and Evidence

Undisputed testimony was provided by both parties that this tenancy began on February 1, 2017 and ended on March 2, 2018, after an arbitrator with the *Residential Tenancy Branch* issued the landlord an Order of Possession. The landlord said that she posted this Order of Possession on the door of the rental unit on March 2, 2018.

The landlord explained that she was seeking a monetary award of \$5,400.00 for unpaid rent representing the months of November and December 2017, along with January and February 2018. The landlord said that rent was \$1,800.00 per month, and a security deposit of \$900.00 paid at the outset of the tenancy, continues to be held by the landlord. The tenant acknowledged not paying the rent for December 2017, along with January and February 2018 but argued that she made a partial rent payment of \$1,000.00 for November 2017's rent.

In addition to an application for unpaid rent, the landlord is seeking a monetary award of \$500.00 for repairs which were required in the suite following the tenant's departure. The tenant conceded that she had damaged the drywall and agreed with the \$500.00 figure cited in the landlord's application.

The tenant is seeking a monetary award of \$7,000.00 related to the loss associated with various items that she said were destroyed by the landlord's actions. The landlord explained that she was granted an Order of Possession on February 28, 2018. She said that she attended the property on March 3, 2018 and discovered the property to be abandoned. The landlord said that the rental unit was bare and that all of the tenant's property had been put in the garage of the main home. The landlord stated that the tenant's property remained in the garage but that certain items which the landlord had deemed to be "junk" were discarded. Furthermore, the landlord argued that she had been informed by the neighbour that the tenant had not been to the property since mid-February 2018. The landlord said she considered the property to be abandoned after hearing this information from the neighbour and after having spoken with BC Hydro who informed her that the utilities were shut off on February 13, 2018.

The tenant argued that the items which had been put outside by the landlord were not "junk" and were in fact personal items which were irreplaceable. The tenant supplied photographic evidence of the items which the landlord continued to hold in her garage.

The tenant said she had not abandoned the property and disputed the date which the landlord provided for the power being shut off on the property, saying that it was done on February 28, 2018. The tenant further disputed that she had removed any items from the property and argued that the landlord had either discarded her items to the front lawn, or locked them in the garage without her permission. The tenant said she returned to the property numerous times on the first few days of March and did not see any Order of Possession posted. She explained that she returned with a moving truck on March 5, 2018 to find many of her belongings exposed to the elements on the front lawn and numerous items destroyed or missing.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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 both parties to prove their entitlement to a claim for a monetary award.

The landlord has applied for a monetary award of \$5,900.00. This represents unpaid rent for November and December 2017, along with unpaid rent for January and February 2018. In addition, the landlord sought \$500.00 for damage to the drywall which the tenant is purported to have caused.

During the hearing, the tenant acknowledged not paying rent for December 2017, along with January and February 2018. In addition, she agreed that she caused \$500.00 worth of damage to the walls of the rental unit.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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. The landlord provided undisputed oral testimony that rent has not been paid for December 2017, along with January and February 2018. I find insufficient evidence was presented by the landlord that the entirety of November 2017's rent was not paid and accept the tenant's

testimony that some rent for that month was paid. I will therefore only allow the landlord to collect the outstanding \$800.00 which the tenant said she did not pay. As the tenant took responsibility for her actions and acknowledged that she caused \$500.00 worth of damage to the wall, I will allow the landlord to recover this amount in addition to the amount due for unpaid rent.

Pursuant to section 67 of the *Act* and based on the landlord's uncontested evidence, I find that the landlord is entitled to a monetary award of \$6,700.00 related to unpaid rent and for damage to the drywall.

I now turn my attention to the tenant's application for a monetary award of \$7,000.00, along with her application directing the landlord to return her personal property. After considering the testimony of both parties, it is evident that the landlord continues to hold numerous items which belong to the tenant. I find that the landlord entered the property *prior* to the Order of Possession coming into effect and seized the tenant's property in contravention to section 26(3) of the *Act*. The landlord was granted an Order of Possession which became valid **2 days after its service to the tenant**; however, testimony provided by the landlord said that she entered the property on March 3, 2018. This is before the effective date of the Order of Possession posted on the tenant's door on March 2, 2018.

I order the landlord return the tenant's personal property currently stored in the garage by April 30, 2018. Failure to follow this order may result in the tenant pursuing further action for compensation under the *Act*.

After considering the tenant's application, I find that her application for a monetary award is premature. The landlord has yet to return her personal property, and any ruling regarding the tenant's application for a monetary award should be made after the landlord has had the opportunity to comply with my order. I therefore, dismiss the tenant's application for a monetary award with leave to reapply. The tenant may pursue an application for a monetary award at a future date.

As both parties were partially successful in their applications, they must each bear the cost of their own filing fees.

Pursuant to section 72 of the *Act*, the landlord may retain the tenant's security deposit in partial satisfaction for the monetary award granted.

Conclusion

The landlord is ordered to allow the tenant access to her property by April 30, 2018. Failure to follow this order may result in the tenant applying for compensation under the *Act*.

The tenant's application for a monetary award is dismissed with leave to reapply.

I issue a Monetary Order of \$5,800.00 in favor of the landlord as follows:

Item	Amount
Partial unpaid rent for November 2017	\$800.00
Unpaid rent for December 2017	1,800.00
Unpaid rent for January 2018	1,800.00
Unpaid rent for February 2018	1,800.00
Repair to drywall	500.00
Less Security deposit	(-900.00)
Total Monetary Order	\$5,800.00

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: April 23, 2018

Residential Tenancy Branch