



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

AAT CNC ERP LAT LRE MNDCT MNRT MNSD OLC OPT OT PSF RP RPP RR

Introduction

This hearing was convened in response to a second application by the tenant following a hearing on August 14, 2018 which was dismissed with leave to reapply for matters remaining relevant following the hearing. The tenant applies for an abundance of items under the *Residential Tenancy Act* (the Act) in compensation for loss or damage, the majority of which are in respect to a tenancy which ended and now is reoccupied. The tenant stated they are also seeking remedy as a matter of principle for the benefit of successive tenants.

Both parties attended the conference call hearing. The tenant made a prior request to retrieve/make available the evidence from a previous application as identified on the *style of cause* page (title page). The landlord acknowledged receiving the evidence of the tenant from that application. The landlord submitted evidence of a letter from the City and a series of 40 photo images to this matter however were unable to serve the tenant as the tenant has solely provided their residential address as the *dispute address*. The landlord's evidence has not been considered, however the landlord was permitted to provide oral evidence during the hearing.

Preliminary matters

The tenant and landlord confirmed that the tenant has not occupied the rental unit since they moved from it July 22, 2018, and they currently reside elsewhere. As preliminary I find that all items on application pertaining to an existing or active tenancy are not

relevant, with the result that I will solely consider and render Decision on the tenant's application for damage and loss, return of their personal property and return of their security deposit (RPP, MNDCT and MNSD). The tenant placed OT (other) on their application but failed to identify what this relates to. It must be known that the tenant's monetary claim is further in respect to a consideration of *aggravated damages*.

All other items on application, (AAT, CNC, ERP, LAT, LRE, MNRT OLC, OPT, OT, PSF, RP, RR) than the 3 stated above are hereby **dismissed**, *without leave to reapply*.

The hearing proceeded on the merits of the tenant's relevant application and their evidence. I have reviewed all evidence before me however only the evidence relevant to the issues in this matter as stated above are described in this Decision. At the end of the hearing both parties testified they had provided all of the relevant evidence they wished to present.

Issue(s) to be Decided

Is the tenant entitled to return of their security deposit in the agreed amount of \$750.00?

Should the landlord be ordered to return the tenant's personal possessions?

Is the tenant entitled to *aggravated damages*?

Background and Evidence

The following is a relevant summary undisputed by the parties. On or about mid-July, 2018 the tenant moved an abundance of their personal belongings out of the unit and they began living outside in a tent in the rear of the residential property. The tenant testified they originally moved out from the rental unit because of, amongst other things, some mould within the unit and other events which made the tenant feel unsafe within the rental unit. The landlord testified the tenant had caused a fire in the suite in May 2018 almost burning down the house and had issued the tenant a 1 Month Notice to End the tenancy for cause.

Subsequent to the tenant moving from the rental unit, the City became notified and Police ultimately intervened, in part to keep the peace following contrasting allegations between the parties of assault. The tenant testified that with aid of family and a truck they determined to move all belongings from the residential property to a rented storage unit on or about July 22, 2018. They claim that upon a returning trip to the residential property their remaining belongings had been moved outside by the landlord some of which were compromised including the tenant's cell phone. The landlord testified the tenant's friend and a co-occupant of the tenancy, or room-mate, removed the tenant's remaining items to the driveway. The landlord testified any damage claimed was not the result of their doing.

The tenant provided that they purchased Canada Post *hold mail service* for a period of 6 months, and paid for rental of a storage unit for their belongings. They seek the landlord compensate them for both of these expenditures. The tenant provided a receipt for Canada Post services in the amount of \$283.50 and an invoice for 'mini storage' services in the amount of \$330.25. The tenant also seeks a quantum for *aggravated damages*.

The landlord testified the tenant was welcome to the return of their entire security deposit of \$750.00, which I will so Order.

Analysis

The full text of the Act, Regulation, and other resources can be accessed via the RTB website: www.gov.bc.ca/landlordtenant .

The tenant, as applicant, bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities.

On preponderance of the relevant evidence before me I accept the tenant's evidence that they vacated the rental unit because, amongst several factors, they no longer felt safe in the unit. I find that a highly disputatious tenancy relationship likely contributed clouded events toward the tenant leaving the residential property; however on a balance

of probabilities I find the tenant left the rental unit on their own volition and that the tenancy ended July 22, 2018.

In respect to the tenant's monetary claims for loss **Section 7** of the Act provides the following in respect to the tenant's claims of damages or loss.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy all component of the test below:

1. *Proof the loss exists.*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the landlord in violation of the Act or an agreement.*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant (landlord) followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The tenant bears the burden of establishing their claims by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can reasonably verify the monetary value or amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

In this matter I find the tenant's claimed *loss* represented as Canada Post services and "mini storage" services was the result of the tenant's choice to contract for these services. The landlord is not responsible for such arbitrary expenditures by the tenant.

I find that certain events may have motivated the tenant to purchase these services but it cannot be said that these expenditures *occurred solely because of the actions or neglect of the landlord in violation of the Act or an agreement*. As a result I **dismiss** the tenant's claim for Canada Post services and "mini storage" services, without leave to reapply.

In this matter the tenant has sought *aggravated damages*. **Residential Tenancy Policy Guideline 16** speaks to the subject of Aggravated Damages as follows;

- "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.

Therefore, aggravated damages are damages awarded to compensate and take into account intangible injury or loss, in contrast to normally assessed pecuniary or monetary damages. They are an award of compensation for *non-monetary* losses. Moreover it must be stated that such damages are not intended to punish (*punitive damages*) as this is beyond my authority.

I generally accept that dispute may be emotionally taxing and infuse stressful situations. However, in this matter I have not been presented with significant evidence of what intangible losses or injury has been caused or experienced by the tenant so as to attract an award of compensation for *non-monetary* losses. Therefore the tenant's claim for *aggravated damages* is **dismissed**, without leave to reapply.

In the absence of opposition by the landlord in respect to the tenant's claim for the return of their security deposit, and indeed upon their insistence, I find the landlord has

effectively relinquished rights to it. As a result I grant the tenant the return of the security deposit in it's entirety in the amount of **\$750.00**.

I have not been presented with sufficiently conclusive or sufficient evidence addressing or quantifying the tenant's claim of loss in respect to personal possessions. As a result I am not able to address or consider the merits of this portion of the tenant's application. Therefore, I must **dismiss** the claim for return of the tenant's personal possessions, *without leave to reapply*.

Conclusion

The tenant's application for the return of their security deposit has been granted and the balance of their application **dismissed**, *without leave to reapply*.

I grant the tenant a Monetary Order pursuant to Section 67 of the Act for the amount of **\$750.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: October 10, 2018

Residential Tenancy Branch