



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC

Introduction

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages or loss pursuant to Section 67
- Return of the tenant's security/pet damage deposits pursuant to Section 38

Both parties attended the hearing. The tenant was represented by an advocate. The landlord was represented by their agent. Both parties were given a full opportunity to be heard, to present testimony, make submissions, to call witnesses and to cross-examine one another. Service of documents was confirmed. The landlord confirmed receiving the application and evidence of the tenant by registered mail; and that they themselves had not submitted evidence to the tenant nor this matter. Based on the testimony and evidence submitted I find that the landlord was served with the respective materials in accordance with Sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The relevant evidence is as follows. This tenancy began in June 2017 and ended January 27, 2019. The rental unit was a suite in a detached house. The payable monthly rent was \$850.00. A security deposit and pet damage deposit in the sum of \$550.00 was paid at the outset of the tenancy and remains held in trust by the landlord.

On December 27, 2018 the landlord delivered to the tenant a hand-written letter stating that their tenancy was being terminated and that they must vacate one month later by January 27, 2019. The tenant arrived home on January 27, 2019 to find that they had been locked out of their home, most of their belongings removed from the rental unit and placed outside, and the access lock changed. It is undisputed by the parties that the tenant's belongings were initially "strewn" on the residential property, and some were still to be retrieved from the rental unit and landlord's storage area. The tenant claims their property was damaged. The tenant claims they were left without alternate accommodations and unable to fully retrieve their personal belongings and furnishings. Some of the furnishings were stored under the landlord's open deck area. The tenant testified they were advised by Police to not retrieve their belongings without assurance by notification from the landlord and Police involvement. The tenant claims they were unable to communicate with the landlord to retrieve them. The landlord testified the tenant's items remained underneath the deck for several months available to the tenant.

The testimonial evidence of the tenant is that following their eviction they lived in their car for two months until they again secured stable living accommodations April 01, 2019. During which period they were not contacted by the landlord. The landlord testified they did not inform the tenant before subsequently disposing of the tenant's belongings, "after several months".

The tenant seeks compensation for loss of certain personal belongings to the sum of \$2882.81. The tenant submitted a series of photo images of their belongings after being removed from the rental unit. The tenant seeks compensation for a, leather chair, elliptical trainer, mattress/box spring, cabinet, bar hutch, bicycle, fish tank/accessories, linens/towels/duvet, 3 tires, and a window covering. The tenant testified that the first 2 of the items were "brand new". The landlord did not respond to this portion of the tenant's evidence.

The tenant seeks compensation of/for *aggravated damages* in the amount of \$3000.00. The tenant testified they were compelled to live in their car for 2 months during inclement / cold weather, which they testified was a hardship for them, while maintaining a work schedule. The tenant's advocate testified they first met the tenant during when they were without stable housing.

The tenant is also seeking recovery of the deposits of the tenancy (\$550.00) pursuant to Section 38(6) of the Act. The tenant provided proof that they sent the landlord their written forwarding address on June 07, 2019 which the landlord acknowledged receiving June 11, 2019. Both parties testified that the deposits of the tenancy remain

with the landlord; and, the landlord acknowledged not provided evidence of filing and serving an application for dispute resolution claiming against the deposits of the tenancy.

Analysis

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

Section 44 of the Act, as it's heading refers, states **How a tenancy ends**. I find there is no mention within Section 44 that a tenancy may end via the method employed by the landlord in this matter. I find the tenancy came to an abrupt end by the landlord effectively ousting the tenant from the rental unit simply because the landlord no longer wanted the tenant there. As a result, it is undisputed the tenant was left without stable housing and some of their belongings compromised by being left outdoors. I accept the evidence of both parties in finding that while it may have been technically available to the tenant to retrieve some of their belongings left outside of the rental unit, the disputatious relationship of the parties made it difficult to do so, that it required guidance of Police.

But moreover, I find that the landlord failed to exercise their duty of care when dealing with the tenant's personal property and ultimately disposed of the tenant's property without notification. **Residential Tenancy Regulation 30 Landlord's duty of care** states that a landlord must exercise reasonable care and caution to ensure the property does not deteriorate and is not damaged, lost or stolen as a result of an unsuitable place of storage. In this matter, the landlord testified they disposed of the tenant's property after several months, however I note it was not done in compliance with Part 5 of the Regulations respecting abandonment of personal property.

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, **Section 7** of the Act effectively states that 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 matter I am satisfied that the landlord contravened sections of the Act in forcefully evicting the tenant without legal cause prescribed under the Act. I accept the tenant suffered a loss resulting from the landlord's conduct of illegal eviction of the tenant and

further they illegally administered the disposition of the tenant's property. In respect to calculating the tenant's loss, I find the tenant has sufficiently supported their claim with a series of photo images depicting the loss and I note, in part, items were assigned a value neither unreasonable nor extravagant. However, in the absence of evidence I do not accept the tenant's testimony their leather chair and elliptical trainer were "brand new". As a result of all the above I am mitigating the tenant's claim for their personal belongings by a general reduction of 15%, and I grant the tenant the set amount of **\$2450.00**.

I find that the landlord possessed the tenant's forwarding address in writing by June 11, 2019. **Section 38(1)** of the Act states that upon receiving the tenant's forwarding address in writing the landlord must return any deposits or file for dispute resolution against them within 15 days thereafter. **Section 38(6)** states that if the landlord does neither they are obligated to pay the tenant double the amount of the deposit(s). In this matter I find that the landlord did not act in accordance with Section 38(1) and as a result the tenant is entitled to be compensated double their deposits of \$550.00 in the sum of **\$1100.00**.

In respect to the tenant's claim for 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.

Aggravated damages are damages awarded to compensate and take into account *intangible* injuries in addition to the normally assessed monetary damages addressed previously. They are an award of compensatory damages for non-monetary losses.

I find that an award for aggravated damages is appropriate in these circumstances. My finding for aggravated damages is not in any way meant to be punitive for the landlord. An Arbitrator does not have the authority to award punitive damages to punish a party. Rather, my award for aggravated damages is a reflection of my finding that the tenant is entitled to be compensated for mental and physical distress when abruptly left homeless and living in their car as a direct consequence of the landlord's negligent behaviour. Therefore, I grant the tenant the equivalent of the tenancy's payable rent of \$850.00

for each of the 2 months (February and March 2019) the tenant was without stable living accommodations, in the total of **\$1700.00** as *aggravated damages*.

The sum of the tenant's awards is **\$5250.00**. I grant the tenant a Monetary Order in this amount under Section 67 of the Act. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court

Conclusion

The tenant's application is granted in the above terms, without leave to reapply.

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 22, 2019

Residential Tenancy Branch