



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0927000 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord, the tenant and the tenant's legal advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

Preliminary Issue

Both parties agree that the address of the subject rental property on the tenant's application for dispute resolution stated the wrong unit number. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to state the correct address of the subject rental property.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant testified that this tenancy began on March 6, 2018 and ended on August 14, 2018. The landlord testified that she could not recall the dates the tenant moved in and out of the subject rental property.

Both parties agree to the following facts. Monthly rent in the amount of \$500.00 was payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant to the landlord. A shelter information form stating same was entered into evidence.

The tenant's legal advocate testified that she mailed the landlord the tenant's forwarding address on July 9, 2019. The tenant's legal advocate testified that a copy was sent to the landlord at the subject rental building and at the corporate office stated on the land title certificate.

Both parties agreed that the building manager called the tenant's legal advocate on July 17, 2019 to inform her that the landlord would not be returning the tenant's security deposit.

The building manager testified that she did not receive the tenant's forwarding address in writing and only called the tenant's legal advocate on July 17, 2019 because she had heard, from unidentified sources, that the tenant was going to do something against her and that she had also heard that he was being helped by the legal advocate.

The building manager testified that she did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit because she did not know she had to.

The tenant testified that he did not authorize the landlord in writing to retain any amount of his deposit. The landlord did not contest this testimony.

Both parties agree that this tenancy ended by way of a verbal mutual agreement to end tenancy. The property manager agreed to refund the tenant August 2018's rent if the tenant moved out immediately. Both parties agree that the property manager refunded the tenant's August 2018 rent and the tenant moved out immediately. The tenant testified that he moved out on August 14, 2018. The property manager testified that she could not recall when the tenant moved out.

The tenant testified that another term of the verbal agreement to end tenancy was that the property manager would store his belongings in a storage locker at the subject rental building until the end of August 2018, to allow the tenant time to find new accommodation.

The property manager testified that she agreed to store the tenant's belongings for two to three weeks, but not until the end of August 2018.

Both parties agree that the property manager stored the tenant's belongings in a storage locker at the subject rental building for a couple of weeks and then moved the tenant's belongings to the roof and put them under a tarp.

The property manager testified that she moved the tenant's belongings because she needed the storage locker for renovation supplies for the subject rental building.

The tenant testified that on August 21, 2019 some of his friends told him that his belongings were on the roof of the subject rental building and that people were stealing his belongings. The tenant testified that everyone in the building had access to the roof and that his belongings were picked through and many items were taken. The tenant testified that he attended at the subject rental building on August 21, 2019 and collected his remaining belongings and called the police. A police report confirming the above was entered into evidence.

The tenant testified that he is seeking a monetary award in the amount of \$1,990.00 for loss of personal possessions. The below table sets out the items the tenant testified were stolen, the amount he is claiming for each item and the source of the estimates which were all entered into evidence.

Estimate From	For	Amount
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N/A	Home Theatre System (Pioneer)	\$50.00
Canadian Tire	Extendable Ladder (Mastercraft)	\$250.00
Craigslist	Mountain Bike (GT)	\$125.00
Craigslist	Nintendo Gamecube + Controller	\$70.00
Ebay	Sega Genesis + Games	\$140.00
Craigslist	Nintendo Wii	\$25.00
Craigslist	Xbox 360 Controller	\$20.00
Aliexpress.com; Sportcheck	Tennis Bag (Head)	\$50.00
Craigslist	Tennis Racquet (Dunlop)	\$30.00
Price Tag; Craigslist	Tennis Racquet X2 (Wilson)	\$180.00
Craigslist	Tennis Racquet X2 (Head)	\$140.00
Craigslist	Tennis Racquet (Wilson)	\$60.00
Craigslist	Bike Stroller (Cruizer)	\$375.00
Craigslist	Roller Blades (Brauer)	\$158.00
Ebay	Vintage Camera (Bell & Howell)	\$40.00
N/A	Sneakers (Diesel)	\$200.0
N/A	Guitar Amp (Traynor)	\$50.00
Ryobitools.com	Pressure Washer, 3000 PSI (Honda)	\$300.00
Fanatics.com	Leather Football Jacket (Oakland Raiders)	\$50.00
Total		\$1990.00

The property manager testified that she was periodically checking on the tenant's belongings to ensure that they were not stolen. The property manager denied that any of the tenant's belongings were stolen.

The tenant's legal advocate made the following submissions. The landlord failed to safeguard the tenant's belongings after contracting to do so, as part of an agreement respecting dissolution of the tenancy. The tenant suffered pecuniary losses with respect to the personal belongings the landlord placed in an insecure location and which were consequently stolen, an entirely foreseeable consequence, and a breach of the Landlord's duty of care as a bailee per *Bello v. Ren*, 2009 BCSC 1598.

I asked the tenant and his legal advocate what section of the *Act*, tenancy agreement, or Regulation, they are alleging the landlord breached. The legal advocate submitted that the landlord breached the mutual agreement to end tenancy when the property manager failed to store the tenant's belongings in a secure location.

Analysis

Section 7 of the *Act* states:

- 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. [emphasis added]
- (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.

Section 67 of the *Act* states:

- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], **if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement**, the director may determine the amount of, and order that party to pay, compensation to the other party. [emphasis added]

Residential Tenancy Branch Policy Guideline 16 (PG 16) states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Residential Tenancy Policy Guideline 16 sets out the following four-point test to determine whether or not compensation is due:

1. Has a party to the tenancy agreement failed to comply with the Act, regulation or tenancy agreement?
2. Has loss or damage resulted from this non-compliance?
3. Has the party who suffered the damage or loss proved the amount of or value of the damage or loss?
4. Has the party who suffered the damage or loss acted reasonably to minimize that damage or loss?

If the answer to any of the above four questions is no, the claim for compensation fails.

I find that the tenant has not proved that the landlord has failed to comply with the Act, regulation or tenancy agreement as the tenant did not allege a breach of the above. The tenant's legal advocate submitted that the landlord breached the mutual agreement to end tenancy.

Section 1 of the Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that a mutual agreement to end tenancy does not fit the above description as it is a separate agreement designed to terminate the tenancy agreement. A mutual agreement to end tenancy is separate and apart from the tenancy agreement and does not afford the parties the same rights and obligations as a tenancy agreement under the Act.

I find that under the Act, I only have authority, pursuant to section 7 and 67 of the Act and PG16, to award damages if a party has breached the **Act, regulation or tenancy agreement**. I find that I do not have authority under the Act to award damages for a breach of the common law. I dismiss the tenant's application for damage and compensation due to lack of jurisdiction.

Security Deposit

I find the property manager's testimony regarding the receipt of the tenant's forwarding address in writing not to be credible. I find that, on a balance of probabilities, it is more likely than not that the property manager called the tenant's legal advocate on July 17, 2019 because she received the letter from the tenant's advocate providing the tenant's forwarding address and requesting the return of the security deposit. I find it unlikely that the property manager happened to hear from unidentified sources that the tenant was going "to do something against her" and that he was represented by the legal

advocate in the same time period the legal advocate mailed the tenant's forwarding address, if the property manager did not receive said document.

I accept the legal advocate's testimony that the tenant's forwarding address was mailed to the landlord on July 9, 2019. I find that service of the tenant's forwarding address was deemed effective on the landlord on July 14, 2019, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

I accept the tenant's undisputed testimony that he did not provide the landlord with written authorization to retain any amount from his security deposit.

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case, the landlord did not return the tenant's security deposit or file an application with the Residential Tenancy Branch to retain the tenant's deposit within 15 days of receiving the tenants' forwarding address in writing. Pursuant to section 38 of the *Act*, the tenant is therefore entitled to receive double his security deposit in the amount of \$500.00 from the landlord.

Conclusion

The tenant's claim for a Monetary Order for damage or compensation arising out the common law is dismissed due to lack of jurisdiction.

I issue a Monetary Order to the tenant in the amount of \$500.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: November 06, 2019

Residential Tenancy Branch