



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$2318.83
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing, by Express Post on August 19, 2019 as the landlord acknowledged receipt of the documents. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on May 1, 2018 when the parties entered into a written one year fixed term tenancy agreement. The tenancy was to end on April 30, 2019. It became month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable on the first day of each month. The rent has subsequently been increased to \$1330 per month. The tenants paid a security deposit of \$650 on March 20, 2018.

There are approximately 30 units in the strata property which is run by a strata corporation. The landlord manages this rental unit only.

At the time the tenancy began the agent for the landlord assigned the tenants locker #18 and showed them the location of that locker. The Condition Inspection Report identifies locker #18 as reserved for the tenants. However, the tenancy agreement states that Locker #17 is reserved for the Tenants.

Around the middle of July 2019 the tenants went down to their locker to discover that all of the belongings including their camping gear were missing. On further investigation with the strata corporation they were told that locker #18 was not the tenant's locker and the belongings were disposed of by the strata corporation. In 2017 there was a reassignment of lockers and the locker assigned to the tenant's unit was locker #5 instead of locker #17.

In June 2019 before disposing of the tenants' belongings the strata corporation placed notices in the two common areas and on the locker #18 demanding that the person who left their belongings in that locker #18 remove them. The notices remained up for 2 weeks. The strata corporation determined the goods were worth between \$200 and \$250 at most and the goods were removed and disposed of.

The tenant initially told the strata corporation/landlord that the goods were worth \$1000. He subsequently revised the claim to \$1700 and then to the \$2300 claimed in the Application for Dispute Resolution.

The tenants testified that they never saw the notices if they were put up.

The monetary order worksheet produced by the tenants identifies 7 items. The total claim made in the monetary order worksheet is \$1114. The tenant has receipts for these items. The goods were purchased between 2012 and 2017 with most of the goods purchased in 2016. The tenants produced receipts for these items. In addition the tenants produced an additional list of over 20 items which total approximately \$1200 but did not produce receipts. The tenant's claim for all of these items is based on replacement costs and does not consider depreciation. The tenant estimated that there would be an average of 30% depreciation if that was considered.

The landlord made the following submissions:

- The tenancy agreement provided that the tenants were to provide the landlord with proof of "tenant insurance including a minimum of \$1000000 comprehensive personal liability. The tenant failed to obtain tenant insurance which would have covered this situation.
- The landlord has not done anything wrong and is not liable. The strata corporation failed to tell them of the strata reassignment.
- The camping gear was old and the tenants have exaggerated the value. The tenants' evidence of value is inconsistent.

The Law:

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

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D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question (my emphasis).** For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Analysis

After carefully considering the Tenants' claim I determined that the tenants are entitled to compensation but the amount claimed is excessive and not supported by the evidence for the following reasons:

- I do not accept the landlord's submission that they are not responsible for the loss of the belongings. The landlord assigned the tenants a locker that the landlord did not have a right to assign. The agent for the landlord showed them the locker they were to use. The tenants reasonably relied on these representations of the landlord.
- The landlord may have a dispute with the strata corporation. It may be that the landlord's effort to locate the owner of the belongings in locker #18 was insufficient. The strata corporation could have delivered a notice to each property. However, that is between the strata corporation and the landlord.
- I do not accept the submission of the landlord that the failure of the tenants to purchase the tenant insurance identified in the tenancy agreement is a defence. There is insufficient evidence to establish that the insurance identified in the tenancy agreement would cover this situation. Further, the landlord failed to prove that had the tenants purchased an insurance that covered this, they would not be exposed to a subrogated claim brought by the tenants' insurers.
- I do not accept the submission that the tenant's were negligent in failing to see the notice posted by the strata corporation.
- However, I determined the tenants failed to prove the amounts they are claiming is supported by the evidence. The strata corporation determined the goods were worth \$200 to \$250. I accept the tenant's submission that this evidence should be disregarded as there is a reason why the strata corporation might undervalue any claims. However, the tenants initially valued the loss at \$1000. They later revised to \$1700 and eventually ended up settling on \$2300.
- The tenants provided receipts for 7 items which totalled \$1114. Most of those items were purchased in 2016. I determined a 30% depreciation factor should be applied to those items reducing the claim of \$780.
- The tenants claim failed to provide receipts for the remainder of the goods. The remainder of the claim totalled approximately \$1200. Policy Guideline #16 provides that the Applicants must prove the quantum of value of their loss. There is insufficient evidence as to the value of the quantum of the loss for these items. However, I determined the tenants are entitled to nominal damages in the sum \$100 for these items.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$880 plus the sum of \$100 in respect of the filing fee for a total of \$980 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 28, 2019

Residential Tenancy Branch