



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the filing fee from the landlord.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

I have amended the style of cause, to correct the spelling of the tenant's first name, as the landlord had made an obvious error. I find the correction is not prejudicial to either party.

Issues to be Decided

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began approximately 10 years ago. Current rent in the amount of \$2,050.00 was payable on the first day of each month. The tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00.

The parties were at a previous hearing and the Arbitrator Ordered the tenant to vacate the premises on February 28, 2019. On February 28, 2019, the parties entered into a temporary occupancy agreement, which gave the tenant possession of the unit until March 6, 2019. Filed in evidence is a copy of previous decision and an occupancy agreement. I have noted the previous decision file numbers on the covering page of this decision.

The landlords claim as follows:

	Stolen items	
a.	2 Persian carpets	\$ 3,912.80
b.	Table, sofa, and chaise	\$ 8,126.65
c.	Power washer	\$ 286.39
d.	Wheelbarrow	\$ 263.19
e.	Garbage/Recycling bin	\$ 151.19
f.	Light fixture	\$ 614.99
g.	Occupancy rent	\$ 396.78
h.	Filing fee	\$ 100.00
	Total claimed	\$ 13,488.80

The landlord's agent testified that the tenant committed theft of the landlord's property which are listed as items a to f, in the above table.

The tenant testified that they took the items as described. The tenant stated that they have those items in storage. The tenant refused to disclose the location of the items and refused to return them. This matter will be further addressed in my decision.

The tenant testified that they started a court action on August 2, 2019, in the Provincial Court which has not been heard, and are keeping the landlord's property as a warehouse lien.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

While I accept the tenant has filed a Notice of Claim in the Provincial Small Claims for issues that occurred during their tenancy; however, section 84.1 of the Act provides the director of the Residential Tenancy Branch has **exclusive jurisdiction of all issue that relate to a tenancy and is not open to question or review in any court.**

At the hearing the tenant acknowledged that they took the landlord's property and it is currently held in storage. I find it was appropriate to have the items returned to the landlord.

Pursuant to section 62(3) of the Act I made the following orders during the hearing:

I **Order** the tenant that they must return the landlord's property on December 2, 2019 at 12:00 pm (noon).

I **Order** the tenant to provide the location of the landlord's property so the parties could meet on December 2, 2019, for the return of the property.

The tenant stated that they refuse to comply with my Orders. The tenant stated that they will under no circumstance disclose the location of the landlord's property or return the property to the landlords.

I find the tenant cannot take or steal someone's property under any circumstances and then hold them ransom simply because they feel they are entitled to compensation for issues that may have occurred during their tenancy. Only the director can determine if compensation is appropriate, and even then, would not give the tenant permission to take or hold property.

The tenant was cautioned several times during the hearing, that they must comply with my Orders and provide the address of where the items are located. I find the tenant refusal was a direct violation of my Orders. The tenant was informed that failure to comply with my Orders could result in an administrative penalty being applied under the Act, which carries a maximum penalty of \$5,000.00. The tenant still refused to comply with my Order.

As the tenant has refused to return the landlord's property, I find there is no further option, except to grant the landlords their monetary claim as listed in their monetary worksheet pursuant to section 67 and 62(3) of the Act. I find the tenant has violated the Act, by intentionally stealing items they were not given permission to remove from the rental unit. Therefore, I grant the landlord the value of the goods that were taken in the amount of **\$12,992.02.**

The tenant further agreed to pay occupancy rent, which was not paid. I find the tenant breached section 26 of the Act, when they failed to vacate the unit on February 28, 2019, which was ordered at the previous hearing and when they failed to pay the

amount listed in the occupancy agreement. Therefore, I find the landlord is entitled to recover the amount of **\$396.76**.

I find that the landlords have established a total monetary claim of **\$13,488.80** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,000.00** and pet damage deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$11,488.80**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

A copy of this decision may be presented to the police or at any other legal proceeding as evidence that the tenant has admitted they have taken the landlord's property without permission.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 29, 2019

Residential Tenancy Branch