



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue #1

Although the application was filed by multiple applicants, only RG, the tenant named on the cover page of this decision and the landlord signed the tenancy agreement supplied as evidence in this proceeding. Only RG is liable for losses or capable of receiving compensation from the landlord. In accordance with Rule 4.2 and section 64(3) of the Act, I determined that the other applicants had no standing to commence an application and I amended the tenant's application to reflect that there was only one tenant, RG. Only RG's name appears on the cover page of this decision.

Preliminary Issue #2

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties

could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Has the landlord breached the Act, regulations or tenancy agreement? If so, is the tenant entitled to compensation?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on October 1, 2018 and was set to end on October 1, 2019. Rent was set at \$2,000.00 per month payable on the first day of the month. A condition inspection report was conducted at the commencement of the tenancy and a security deposit of \$1,000.00 was collected by the landlord which he continues to hold.

The tenant provided the following testimony. On Sunday, September 1, 2019 while vacationing in Whistler, BC, he sent a text to the landlord indicating he would be back on Tuesday or Wednesday (specific date not specified) to set up a date for a condition inspection report. The tenant advised the landlord to make arrangements with the tenant's sister to make the appointment as the tenant was in Whistler. The tenant said, he and his family (who were living with him in the rental unit) had always planned on moving out at the end of the fixed term tenancy, October 1, 2019. The tenant received a text back from the landlord the on September 2nd saying the tenant has 24 hours to reply or the landlord would take legal action. On September 6th, the locks were changed and on September 10th, the sister went to the rental unit to discover she could not access the rental unit because of the changed locks.

The tenant discovered that the landlord had then advertised the rental unit as a fully furnished apartment and believes that his furniture is in the rental unit that the landlord rents out. The tenant provided a screenshot of the online advertisement as evidence.

The tenant says the landlord stopped communicating with them when he tried to have his possessions returned. The tenant alleges that the landlord changed the locks with most of his personal items such as a couch, tv, clothes, dishes and a bed still in the rental unit. A monetary order worksheet for the items was provided by the tenant in reflection of the loss of these items, however, no proofs of purchase were supplied.

The landlord provided the following testimony and provided copies of text messages between the parties. On Sunday, September 1, 2019, he sent the tenant a text asking for the September rent and advised the tenant that he had three \$50.00 fines to pay. On September 2nd, the tenant responded with the following:

Talk to my sister and set up a day for you to check out the condo.

Everything is out, cause you have my \$1000 deposit. Im back Tuesday night so best you do it tom or wed

The landlord responds saying everything needs to be taken out and cleaned the way it was when the tenant moved in and confirms the tenant say everything is out. The tenant responds with:

Im out of town. I got a month so ill give you the keys in a week or so

Texts were sent back and forth between the parties. On September 5, the landlord asks whether the tenant was still intending on paying rent for the month or if he has mutually agreed the tenancy was over. If not staying as his tenant, he is '*considered fully moved out*'. No response to the text would be considered as an agreement the tenancy ended. On September 5th, the landlord also asks the tenant for his forwarding address. No evidence was provided from either party as to whether a forwarding address was ever given to the landlord.

In rebuttal, the tenant testified that in the September 2nd text provided as evidence by the landlord, he didn't mean to say that 'everything is out'. The tenant says he 'texted it wrong'. The tenant said, "he meant to say" that he and his family were starting to move things out, however they had yet to complete their move. The tenant testified that the phrase 'cause you have my 1000 deposit' was also sent in error. During testimony, the tenant could not clarify what was exactly he meant. The tenant indicated he never expected the landlord to change his locks and assumed that because the tenancy agreement had an end date of October 1st, 2019, the tenant and his family could not end it on their own.

The landlord testified that the tenant's texts confused him. He had to assume that based on the tenant's texts and the failure to pay rent for September that the tenant had

abandoned the rental unit. When he went in to view the unit after he considered it abandoned, the apartment was 'kind of a pigsty'. Mostly 'garbage' and everything of no value. The apartment contained a couch that the landlord brought to his parents' house to be stored as well as a television. The landlord said no computer was left behind, while, other items were given away to family but retrieved and put into storage at his parents' home afterwards. The landlord said he did not sell off or dispose any of the tenant's goods. The landlord did not conduct a written inventory of the tenant's goods; however, he photographed each item. The landlord did not provide the photos as evidence in these proceedings.

The landlord testified that he did not advise the tenant that he had the tenant's goods in storage because he was advised by the police to not contact the tenant. The landlord alleges the tenant had written 'prank letters' to the building management and the police and caused damage to his car. These letters were provided as evidence by the landlord. On September 10th, the tenant made threats to him, indicating he would come by his place of work or at his parking spot. This caused the landlord to stop communication with the tenant. Copies of the texts with the threats were provided as evidence as well.

Analysis

Section 7 of the Act states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The tenant therefore, has the burden to prove that on a balance of probabilities, the landlord breached the Act, regulations or tenancy agreement. The tenant claims that the landlord changed the locks to the rental unit although the tenancy had not yet ended. I find that the tenant has failed to provide sufficient evidence to show the landlord did so while there was a tenancy in place.

Following a review of the evidence and testimony, I find the tenancy ended on September 1, 2019. I make this finding based specifically on the text messages sent by the tenant to the landlord in the first week of September 2019.

Turning first to the text message of September 1 and 2. When the landlord sent the text on September 1st, I find that he had no reason to believe the tenancy was over as the landlord was simply seeking rent for September. It is the response from the tenant on September 2nd that causes me to believe the tenant had terminated the tenancy and potentially abandoned the rental unit when he tells the landlord to **'talk to his sister'** and set up a day to **'check out the condo.'** The only reasonable meaning for this is that the tenant considered the tenancy over and that the landlord may perform a condition inspection report with the sister. ***Im back Tuesday night so best you do it tom or wed*** could reasonably be interpreted to mean the tenant wanted to do a condition inspection report with the landlord on Tuesday or Wednesday, September 3 or 4.

'Everything is out, cause you have my 1000 deposit' could only mean that the tenant has removed all his possessions, or at least those he considered of any value. During the hearing, the tenant was unable to define for me what he meant by ***cause you have my 1000 deposit*** which I interpret to mean the tenant felt the landlord could retain his deposit in return for cleaning the apartment that was left with the tenant's unwanted belongings.

I do not accept the tenant's contrary testimony that he simply 'mis-texted' what he really meant and that he actually was planning on leaving at the end of September. I find that on a balance of probabilities, the tenant ended the tenancy by abandoning it on September 1st, a month before the end of the original fixed term of October 1st.

Section 24(1)(a) of the Residential Tenancy Regulations states a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended or 24(1)(b)(ii) the tenant leaves the personal property on residential property from which the tenant has removed substantially all of his or her personal property.

Pursuant to section 24(3), If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

Based on the above evidence I find the landlord was correct in finding the rental unit abandoned. When a rental unit is abandoned, the landlord is bound by section the Regulations (below).

25 Landlord's obligations

- 1) The landlord must
 - a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
 - b) keep a written inventory of the property,
 - c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
 - d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
 - a) the property has a total market value of less than \$500,
 - b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
 - c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

The landlord testified during the hearing that he never advised the tenant or the tenant's representative either that the property is stored or that it had been properly disposed of. The text messages show that the landlord ceased communication with the tenant even though the tenant specifically asked for his possessions back in a text.

I find that although the landlord has not breached any section of the Residential Tenancy Act in considering the rental unit abandoned and taking it over, **the landlord has breached section 25(1) of the Residential Tenancy Regulations** by failing to keep a written inventory of the tenant's personal property or advising the tenant or his representative the information that the property is stored or that it has been disposed of. I make this finding despite the landlord's reasons for discontinuing communication with

the tenant. For the purposes of this hearing, my determinations are limited to whether the parties have complied with the Act, regulations or tenancy agreement.

For this breach, the tenant is entitled to some compensation, however I find the tenant has contributed to his own losses and failed to mitigate his damages by leaving his possessions behind when he abandoned the rental unit. Residential Tenancy Policy Guideline PG-5 [duty to minimize loss] states:

Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim. Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation. The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

...

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states:

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. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

...

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.

I accept the tenant's testimony that the landlord has not returned the tenant's sofa and large screen tv and a variety of miscellaneous clothes that the tenant declares have intrinsic value. The landlord has denied holding the tenant's computer and I accept this testimony. For the sofa, tv and miscellaneous items, no proof of purchase for the items were provided which would assist me in determining how much was paid for his possessions and assist me in assessing their current value, given the age and depreciated values of his items. The tenant testified that he considers his old possessions have little value as they are now considered 'used goods', over a year old and not brand new. He testified he is not interested in having them returned to him. In the case before me, I find the tenant is entitled to nominal damages in the amount of \$1,500.00.

As the tenant testified he did not want his possessions back during the hearing, the landlord may dispose of the property in accordance with section 29 of the Regulations.

The tenant claims for a return of his security deposit in the amount of \$1,000.00. The evidence shows the landlord asked the tenant for his forwarding address by text message and did not receive it. The landlord has not filed an Application for Dispute Resolution to retain the security deposit and I find the tenant is therefore entitled to have it returned to him. Pursuant to section 38 of the Act, I award the tenant \$1,000.00 as a return of the security deposit.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$2,600.00**.

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: January 23, 2020

Residential Tenancy Branch