



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 an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 10, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on October 15, 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on October 15, 2019.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional thirty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

I informed the tenant of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant provided uncontradicted evidence as follows as the landlord did not attend the hearing.

The tenancy began in June 2014. Monthly rent payable on the first of the month was \$847.00. In mid-April 2019, the tenant provided written notice to the landlord that he intended to vacate the unit on May 31, 2019.

The tenant provided a security deposit of \$385.00 at the beginning of the tenancy. The landlord holds the security deposit and the tenant has not provided authorization to the landlord to retain the deposit. The tenant stated he provided his forwarding address to the landlord by registered mail sent on May 31, 2019 to the landlord. The tenant provided the tracking number in support of this mailing to which I refer on the cover page.

The tenant stated that he had moved "half" his possessions to his new unit in early May 2019 and returned to the unit from time to time. On May 15, 2019, the tenant returned to his unit to discover that the remainder of his possessions had been removed and discarded without his permission. The tenant's personal safe had been broken open and the contents, private personal papers, were gone. The tenant provided supporting photographs of the broken, opened safe.

The tenant had purchased 3 air conditioners to fix up and sell; they were missing. The remainder of the tenant's clothing was gone. The tenant's decorative silk plants were missing as was his kitchen table and chairs.

Other than the broken safe and painting supplies, the tenant found the unit empty.

The tenant testified that the following items were missing with corresponding values for which he requested reimbursement. The tenant provided receipts for items 1, 2 and 3. All purchase dates were within a year of the event. The tenant provided store estimates for items 4 and 5.

	ITEM	AMOUNT
1.	Three air conditioning units	\$600.00
2.	Safe	\$200.00
3.	kitchen table and chairs	\$475.00
4.	Clothing – 5 pairs of jeans	\$487.07
5.	Plants – silk	\$190.36
	TOTAL CLAIM	\$1,952.43

The tenant submitted a receipt from a cleaning company for cleaning of the unit scheduled to take place on May 31, 2019 in the amount of \$500.00. The tenant pre-paid the bill and had scheduled cleaning on the last day of the tenancy. The amount was not refunded to the tenant even though the services were not provided. The tenant claimed reimbursement of this amount as he had no knowledge that the landlord intended to remove his possessions and paint/clean the unit two weeks before his vacancy date.

The tenant requested reimbursement of the amount of rent for a 2-week period from May 15 to May 31, 2019 following the occupation of the unit by the landlord for painting.

The tenant requested reimbursement of double his security deposit as the landlord had not returned the deposit after receipt of the forwarding address nor had the landlord filed an application to retain the deposit.

The tenant also requested reimbursement of the filing fee.

The tenant provided a written witness statement from CW who also attended the hearing. CW personally saw the empty unit and his evidence corroborated the tenant's testimony in material respects.

The tenant's claim is summarized as follows:

	ITEM	AMOUNT
1.	Three air conditioning units	\$600.00
2.	Safe	\$200.00
3.	kitchen table and chairs	\$475.00
4.	Clothing – 5 pairs of jeans	\$487.07
5.	Plants – silk	\$190.36
6.	Cleaning expenses	\$500.00
7.	Rent reimbursement	\$423.85
8.	Security deposit	\$385.00
9.	Double security deposit	\$385.00
10.	Filing fee	\$100.00
	TOTAL CLAIM	\$3,746.28

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Damages

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the tenant to prove the tenant is entitled a claim for a monetary award.

The tenant was well-prepared and organized. I find the tenant a credible witness whose testimony was supported by documentary evidence and a witness' testimony. I accept his testimony that the items he left in the unit pending his final move at the end of the tenancy were taken and disposed of without his consent. I accept as a reasonable finding that the landlord was responsible for taking the tenant's belongings. I accept the tenant's modest list of missing items and his statement, supported by photographs, that the safe had been broken into and private papers removed. The tenant provided supporting documents, either receipts or reasonable estimates, for each item claimed missing from his apartment when the landlord took over mid-May 2019 to paint without the tenant's permission. I find the tenant has met the burden of proof on a balance of probabilities that the tenant incurred the damage and costs claimed, the landlord is responsible, the tenant took reasonable steps to reduce his costs, and reasonable costs have been established.

I accept the tenant's uncontradicted testimony, supported by the witness statement, that the landlord took over the unit two weeks prior to the end of the term without the tenant's consent. I accept that the tenant could not use the unit because of the landlord's violation of the terms of the agreement. I accept the tenant's assertion that the landlord took it upon himself to end the tenancy without the consent of the tenant. I therefore find the tenant has met the burden of proof on a balance of probabilities that he is entitled to compensation for half a month's rent.

For these reasons, I accept the tenant's evidence that he owned the items taken and that the supporting receipts substantiate the quantum of loss. I also accept the tenant's testimony, supported by a receipt, that he pre-paid for cleaning and did not get the expense reimbursed.

I therefore grant the tenant a monetary award as follows under this heading:

	ITEM	AMOUNT
1.	Three air conditioning units	\$600.00
2.	Safe	\$200.00

3.	kitchen table and chairs	\$475.00
4.	Clothing – 5 pairs of jeans	\$487.07
5.	Plants – silk	\$190.36
6.	Cleaning expenses	\$500.00
7.	Rent reimbursement	\$423.85
	TOTAL AWARD	\$2876.28

Security deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must 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 tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address on May 31, 2019, deemed received by the landlord under section 90 five days later, that is, on June 5, 2019.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary award of twice the security deposit.

Filing fee

As the tenant has been successful in this action, I grant the tenant a monetary award for reimbursement of the filing fee.

Summary of Award

I grant the tenant a monetary order of **\$3,746.28**. My award is summarized as follows:

	ITEM	AMOUNT
1.	Three air conditioning units	\$600.00
2.	Safe	\$200.00
3.	kitchen table and chairs	\$475.00
4.	Clothing – 5 pairs of jeans	\$487.07
5.	Plants – silk	\$190.36
6.	Cleaning expenses	\$500.00
7.	Rent reimbursement	\$423.85
8.	Security deposit	\$385.00
9.	Double security deposit	\$385.00
10.	Filing fee	\$100.00
	TOTAL CLAIM	\$3,746.28

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$3,746.28** as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: February 03, 2020

Residential Tenancy Branch