



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, RPP, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to return the security and pet deposits (the deposits), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or the tenancy agreement, pursuant to section 67 of the Act;
- an order for the landlord to return the tenant's personal property, pursuant to section 65 of the Act, and
- an authorization to recover the filing fee, pursuant to section 72 of the Act.

I left the teleconference connection open until 10:43 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness LO and advocate SD also attended. I also confirmed from the teleconference system that the tenant, her witness, advocate and I were the only ones who had called into this teleconference.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on June 22, 2020. I find the landlord was served in accordance with section 89(1)(c) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on June 27, 2020, in accordance with section 90(a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Jurisdiction

The tenant's application for monetary compensation is for \$35,000.00 for the loss of her personal items. The tenant also applied for the return of the deposits and for an order for the landlord to return her personal property. The tenant affirmed the landlord still holds in trust the deposits in the amount of \$675.00. Thus, the total amount of the tenant's application is of \$36,450.00 ($35,000.00 + 675 \times 2 + 100.00$).

Residential Tenancy Branch Policy Guideline 18 states:

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

The tenant was advised at the hearing that the claim exceeds \$35,000.00 and is therefore outside of the jurisdiction of the Residential Tenancy Branch.

The tenant amended her application to reduce the amount of the monetary application for loss of her personal items to \$33,000.00 and withdrew the application for an order for the return of her personal property. The tenant affirmed the monetary application is only for loss of personal items.

Pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the tenant's application for a monetary claim to \$33,000.00 for the loss of personal items. Thus, the total amount of the tenant's application is \$34,450.00 ($33,000.00 + 675.00 \times 2 + 100.00$) and I have jurisdiction to hear this matter.

Preliminary Issue – Summons to Produce Evidence

The tenant asked the Residential Tenancy Branch to summon the police to provide copies of police files related to this matter.

Rule of Procedure 5.4 states:

5.4 When a request for a summons may be made

A written request for a summons should be made as soon as possible before the time and date scheduled for a dispute resolution hearing.

In circumstances where a party could not reasonably make their application before a hearing, the arbitrator will consider a request for a summons made at the hearing.

The tenant did not explain why she did not submit a written request for the Residential Tenancy Branch to summon the police to provide the police file regarding the tenant. Thus, I dismiss the tenant's request for the Residential Tenancy Branch to summon the police to produce copies of police files.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return double the deposits?
2. a monetary order for compensation for loss?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate their application.

The tenant initially affirmed the tenancy started on June 15, 2015 and ended between June 27 to 30, 2018. Later the tenant affirmed the tenancy ended on July 01, 2018. Monthly rent was \$850.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$425.00 and a pet damage deposit of \$425.00 were collected. Later the tenant corrected herself and affirmed the pet deposit was \$250.00. The landlord still holds both deposits in trust. This application was filed on June 12, 2020.

The tenant affirmed she did not provide her forwarding address to the landlord.

The tenant affirmed there was no written tenancy agreement. The tenant submitted a 'British Columbia shelter information' document dated June 14, 2016 stating she lives at the rental unit address. The tenant also submitted into evidence a two-page list of her personal items, including televisions, dishes, baby clothing and family photographs. The tenant was not served any eviction related document.

The tenant affirmed on June 27, 2018, when she returned to her rental unit, all her personal items were missing. The tenant contacted the police. The tenant believes the landlord disposed of all her personal items and \$33,000.00 is a fair compensation for the loss of her personal items.

Witness LO affirmed the landlord cleared the tenant's rental unit. The landlord is not a nice person and during the tenancy often electricity and water were not available in the rental unit. The landlord sent threatening text messages to witness LO.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Return of the Deposits

Section 39 of the Act states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I accept the tenant's testimony that the forwarding address was not provided and the tenancy ended on July 01, 2018. This application was filed on June 12, 2020. Pursuant to section 39 of the Act, the tenant's right to the return of the security deposit extinguished on July 01, 2019.

Thus, I dismiss the tenant's application for an order for the return of the deposits.

Personal items

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

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.

(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.

Director's orders: compensation for damage or loss

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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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.

The tenant's testimony was not cohesive or convincing. The tenant corrected her testimony more than once during the hearing and was not aware of particulars or details of the case. The witness testimony was also not enough to convince me, on a balance of probabilities, that the landlord disposed of the tenant's personal items. Thus, I find the tenant did not prove the landlord failed to comply with the Act, the regulation or the tenancy agreement.

As such, I dismiss the tenant's application for a monetary order for compensation for loss of personal items.

The tenant must bear the cost of her filing fee, as the tenant was not successful in her application.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: July 20, 2020

Residential Tenancy Branch