Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDCT, RPP

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for the landlord to return the tenants' personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that they served the landlords with this application for dispute resolution on November 17, 2020. The landlords confirmed receipt on or around November 20, 2020. I find that the tenants' application for dispute resolution was served on the landlords in accordance with section 89 of the *Act.*

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to an Order for the landlord to return the tenants' personal property, pursuant to section 65 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agree that they had a previous arbitration regarding the same rental address. I informed both parties at the hearing that this hearing was not an opportunity to re-argue issues that were before the original arbitrator and that I did not have the authority to change any previous findings of fact. The file number of the previous arbitration is on the cover page of this decision.

The previous decision is dated May 2, 2019 and was amended on July 30, 2019.

Both parties agree that the tenants provided the landlord with less than one months' notice to end the tenancy at the end of the fixed term, that being December 15, 2018, and did not pay rent on December 1, 2018.

Both parties agree that on December 2, 2018 the landlords personally served the tenants with a 10 Day Notice for Unpaid Rent with an effective date of December 12, 2018. The tenants did not dispute the 10 Day Notice.

Both parties agree that the landlord changed the locks on December 5, 2018, before the tenants had moved all of their belongings out of the unit. Both parties agree that on December 12, 2018 the landlords moved the tenants' remaining belongings to their heated garage.

The landlords testified that they became aware of a break in at the subject rental property on December 7, 2018 and notified the tenants on the same date. The tenants confirmed the above testimony. The landlords testified that they called the police, but the police told them that the tenants need to report any theft. The landlord testified that the tenants refused to report the theft because the tenants kicked in the door to remove their items.

The tenants testified that they did not kick down the door and would not be calling the police because they no longer had possession of the property.

The previous decision found:

> The landlord provided photographic proof the door was kicked in, as well as an invoice for $200.00 for its repair. The tenant did not dispute the kicked in door at the hearing.
>
> In accordance with section 7 of the *Act*, I award the landlord $200.00.

The tenant testified that in the last hearing they didn't agree that they kicked in the door and deny that it is true.

The tenants testified that the landlords have refused to return their personal property unless the tenants pay them storage fees. The tenants testified that they are not willing to pay the landlords storage fees because they would not have been necessary if the landlords hadn't locked them out.

The landlords testified that they provided the tenants with many opportunities to pick up their belongings, but the tenants did not do so. The landlords testified that they still have all of the tenants' belongings stored in their garage.

The text messages entered into evidence between the parties from December 8-12, 2018 show that the landlords asked the tenants to come and remove their items from the subject rental property and the tenants respond that they are not able to come until the next week. The landlords made the following response on December 12, 2018:

> Well [tenant T.P.] you have known since December 2, 2018 that you had to be gone today. We have given you ample opportunity to come any time to retrieve your items. You still need to come tonight and see what is being moved and bring our keys. We will be moving the stuff tonight and there will be an additional charge of $100.00 to move it, as well as storage fees. I will contact you when you return home in Jan so that you can make arrangements to come pick up. So we will see you at 6:30.

The tenants responded on December 12, 2018:

> No we aren't' paying you anything because you had no right to lock us out of your stuff so good luck trying to get that I will be taking you guys to arbitration for locking us out a rental that we had a lease in. That we still had possession….

Both parties entered into evidence a letter from the landlords to the tenants dated September 7, 2019 which states in part that the landlords will release the tenants'

personal property when the tenants pay storage costs in the amount of $60.00 per month for 10 months.

In the previous arbitration, the landlord sought compensation for storing the tenants' belongings. The arbitrator found:

> The landlord moved items out of the rental unit prior to the end of the tenancy. The landlord had no legal authority to take such action. I dismiss this portion of the landlord's claim without leave to reapply.

Both parties entered into evidence a letter from the landlords to the tenants dated January 1, 2018 which states:

> Items removed on Dec 12/18 left behind by tenants and not removed within 10 day eviction. All being stored at [address of landlords' heated garage]. Text sent to tenant {as no forwarding address} to contact us for a pick up date. Pictures of all items available
>
> 1. Mis kitchen items, 2 glass containers, flowers
> 2. Pink and purple toddler bed
> 3. Square coffee table
> 4. Pink weightlifting belt
> 5. ½ crib/toddler bed
> 6. Numerous videos;
> 7. Dismantled table (top and 4 legs)
> 8. Grey couch
> 9. Coffee table
> 10. High chair
> 11. Mis garbage
> 12. 2 tires
> 13. ½ dresser left on driveway with no drawers
> 14. Bucket full of "stuff"
> 15. Battery operated children's jeep
> 16. Multiple scarf's
>
> All small items are in 3 garbage bags.
>
> 2 trips with our pickup truck, and storage in our heated garage- $150.00

The previous decision found:

Sections 31(1) and (1.1) of the *Act* clearly states a landlord may not change the locks. If the locks are changed by the landlord, the landlord must provide the tenant with new keys. As the landlord changed the locks in contravention of sections 31(1) and (1.1) of the *Act*, she is not entitled to recovery of the $61.60. This portion of the landlord's claim is dismissed without leave to reapply.

The tenants are claiming for the return of person property and monetary compensation for the following items:

Item	**Amount**
Weightlifting belt	$100.00
Kids' bed	$917.27
½ December 2018's rent	$900.00
Two tires	$200.00
Two coffee tables	$300.00
Highchair	$60.00
Miscellaneous household belongings	$300.00
Couch and dining table	$1,735.99
Kids' jeep	$300.00
Total	**$4,813.26**

Weightlifting belt

The tenants testified that they replaced the weightlifting belt because the landlords refused to return their person property without paying storage fees. The tenants testified that the belt was 4-5 months old at the end of this tenancy. The tenants testified that they did not keep the receipt for the new weightlifting belt. The tenants testified that they are seeking $100.00 for the weightlifting belt. The tenants entered into evidence an online advertisement for a weightlifting belt in the amount of $100.00.

The landlords testified that they still have the weightlifting belt. The landlords testified that the tenant should have been able to provide proof of purchase or proof of payment via a credit card.

Kids' bed

The tenants testified that prior to their belongings being stored by the landlords they purchased a new loft bed for their kids, in the amount of $917.27, a receipt for same

was entered into evidence. The tenants testified that they planned on selling the crib, which the landlord has in storage, to offset the cost of this new bed. The new bed is not held by the landlord.

The landlords testified that the crib is old and that it and two matching dressers were listed for sale online by the tenant for $400.00 in total. The advertisement was entered into evidence. The tenants testified that they had tried to sell the crib and dressers for $400.00 but had to pull down the add when the landlords locked them out. The tenants testified that the crib and matching dresser set were purchased new in December of 2013 for approximately $1,000.00. No receipts to prove the cost of the crib and dressers were entered into evidence.

The landlords testified that the loft bed receipt is dated November 24, 2018.

The landlords testified that they have the crib and one dresser without drawers. The landlords testified that the drawers, mattresses and other dresser were taken in the break in. The landlords entered into evidence photographs dated December 12, 2018 of the crib in the subject rental property without a mattress and no dressers. A photograph of the backside of a dresser in a driveway was entered into evidence.

½ December 2018's rent

The tenants' application for dispute resolution sought a monetary award of $900.00 for rent paid by the tenants to the landlords for December 1-15, 2018.

The previous decision found:

> Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] indicates when a landlord seeks damages for unpaid rent at the conclusion of a tenancy, the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. For the half month's loss of rent I award the landlord $900.00.

Two tires

The tenants testified that they did not replace the two used tires left at the subject rental property because they got a different vehicle. The tenants testified that they lost the ability to sell the tires. The tenants are seeking $200.00 for the tires. The tenants testified that the tires were $380.00 brand new. The tenants did not testify as to the age

of the tires at the end of this tenancy. No receipts or estimates were entered into evidence.

The landlords testified that the tenants left the tires outside and that the tenants could have come and got them at any time. The landlords testified that they did not know if they still had the tires.

Two coffee tables

The tenants testified that they purchased the two coffee tables used. The tenants testified that they did not replace the coffee tables with like coffee tables but new glass ones. The receipts for same were not entered into evidence. The tenants testified that they were planning on selling the coffee tables and lost their ability to do so when the landlords changed the locks. The tenants testified that they are seeking $300.00 for the tables, no receipts or estimate were entered into evidence.

The landlords testified that the tenants advertised the coffee tables with a pair of nightstands for $100.00. The landlords entered into evidence an online advertisement for the tenant's sofa, coffee table and nightstand for $100.00. The tenants testified that all three were not for sale for $100.00 in total and that if you clicked on the advertisement each item was listed separately. The tenant testified that the coffee table was advertised for $80.00.

The landlords testified that they still have both coffee tables.

Highchair

The tenants testified that they did not replace the highchair because their children have outgrown it but they intended on selling it. The tenants testified that they are seeking $60.00 for the highchair. No receipts or estimates were entered into evidence. The tenants testified that the highchair was two years old at the end of this tenancy.

The landlords testified that they still have the highchair.

Miscellaneous household belongings

The tenants testified that they are seeking $300.00 for the miscellaneous items listed on the landlord's January 1, 2018 letter including kitchen items, DVDs, scarves and electronic items.

The landlords testified that they still have all of the above items.

Couch and dining table

The tenants testified that they replaced the couch with a recliner. A receipt for a new recliner in the amount of $400.00 plus tax was entered into evidence. The tenants testified that they purchased the couch used for $300.00 in 2016. The tenants testified that they advertised the couch for sale online for approximately $150.00.

The landlords testified that they still have the couch.

The tenants testified that they replaced the dining room table. A receipt for a new dining room table and seating in the amount of $999.99 plus tax was entered into evidence. The recliner and dining room set appeared on the same bill and a $130.00 financing fee was also levied on that bill.

A throw in the amount of $20.00 plus tax is also on the same receipt. Neither party gave testimony on the throw. The tenants testified that they had intended on keeping the dining room table but were forced to buy a new one. The tenants testified that the dining table was purchased used in 2016 for approximately $500.00. No documents were entered into evidence to support this transaction.

The landlords testified that they still have the dining room table.

Kids' jeep

The tenants testified that a child's play jeep was left at the subject rental property and that it has not been replaced. The tenants testified that it was a Christmas gift in December of 2015. The tenants testified that they are seeking $300.00 for the jeep. An online advertisement for a child's jeep toy was entered into evidence in the amount of $300.00.

The landlords testified that they still have the jeep.

Analysis

Section 67 of the *Act* states:

> 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the person making the claim must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Policy Guideline 16 states that 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.

I note that the previous decision found that the landlords breached section 31(1) and 31(1.1) of the *Act* by changing the locks.

Section 65(1)(e) of the *Act* states:

> **65** (1)Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
>
> (e)that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

Residential Tenancy Guide #40 states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.
>
> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Weightlifting belt

I find that the tenants have not proved, on a balance of probabilities, that they replaced the weightlifting belt as no receipts were entered into evidence. I find that the tenants have not proved the value of their loss. I therefore find that the tenants are not entitled to monetary compensation for the belt.

The previous decision found that the landlords did not have authority to remove the tenants' belongings or charge a storage fee. Pursuant to section 65(1)(e) of the *Act*, I

order the landlords to return the weightlifting belt to the tenants. I find that the tenants do not owe the landlords any storage fees for the weightlifting belt.

Kids' bed

The tenants testified that they were deprived the opportunity to sell the crib and dressers and that the new bed was purchased prior to being locked out. I find that the tenants are not entitled to receive the cost of the new bed they purchased for their children as this was not a loss that they suffered as a result of the landlords' breach of section 31(1) of the *Act.* I find that the loss suffered by the tenants was that they were not able to sell the crib and dresser.

The previous decision held the tenants responsible for the damage to the door caused by the tenants breaking into the subject rental property. While the tenants denied that they broke into the subject rental property in this hearing, as I stated in the beginning of this hearing, I am not able to change a finding of fact made by the previous arbitrator. I therefore find that the landlords are not responsible for the missing dresser and drawers.

I find that the tenants are entitled to the return of the crib and dresser from the landlords, which should return them to the same position as if the landlords had not breached section 31(1) of the *Act* as they will now be able to sell the items.

I find that the tenants do not owe the landlords any storage fees for the crib and dresser.

½ December 2018's rent

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The previous decision found:

> Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] indicates when a landlord seeks damages for unpaid rent at the conclusion of a tenancy,

> the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. For the half month's loss of rent I award the landlord $900.00.

The issue of rent due from December 1-15, 2018 was conclusively decided in the previous hearing. I find that the issue is res judicata and is therefore dismissed. I informed both parties of same during the hearing.

Two tires

I find that the tenants have not proved the value of the tires left at the subject rental property as no receipts or estimates were entered into evidence. The tenant's claim for compensation is therefore dismissed.

Pursuant to section 65(1)(e) of the *Act,* I order the landlords to return the tires if the tires are still in their possession.

I find that the tenants do not owe the landlords any storage fees for the tires.

Two coffee tables

I find that the tenants have not proved the value of the two coffee tables left at the subject rental property as no receipts or estimates were entered into evidence and the tenants did not know the age of the coffee tables. Without knowing the age of the coffee tables, it is not possible to complete a useful life calculation as set out in Residential Tenancy Policy Guideline #40. While Policy Guideline #40 refers to building elements, the same policy can be applied to possessions as they too depreciate over time. The tenant's claim for compensation is therefore dismissed.

Given that the tenants intended on selling the coffee tables, I find that the tenants would be returned to the same position as if the landlords had not breached section 31(1) of the *Act* if the tables were returned to the tenants. Pursuant to section 65(1)(e), I Order the landlords to return the coffee tables to the tenants.

I find that the tenants do not owe the landlords any storage fees for the two coffee tables.

Highchair

I find that the tenants have not proved the value of the highchair left at the subject rental property as no receipts or estimates were entered into evidence. The tenants' claim for compensation is therefore dismissed.

Given that the tenants intended on selling the highchair, I find that the tenants would be returned to the same position as if the landlords had not breached section 31(1) of the *Act* if the highchair was returned to the tenants. Pursuant to section 65(1)(e), I Order the landlords to return the highchair to the tenants.

I find that the tenants do not owe the landlords any storage fees for the highchair.

Miscellaneous household belongings

I find that the tenants have not proved the value of the miscellaneous items left at the subject rental property as no receipts or estimates were entered into evidence. The tenants' claim for compensation is therefore dismissed.

Pursuant to section 65(1)(e), I Order the landlords to return the tenants' miscellaneous household items to the tenants.

I find that the tenants do not owe the landlords any storage fees for the miscellaneous household items.

Couch and dining table

I find that the tenants intended on selling the couch at the subject rental property. No receipts or other documents concerning the amount of money paid for the couch were provided. The tenants testified that they bought the couch used but did not identify how old the couch was. Without knowing the age of the couch, it is not possible to complete a useful life calculation as set out in Residential Tenancy Policy Guideline #40. The tenant's claim for compensation is therefore dismissed as the value of the loss has not been proved.

Given that the tenants intended on selling the couch, I find that the tenants would be returned to the same position as if the landlords had not breached section 31(1) of the

Act if the tables were returned to the tenants. Pursuant to section 65(1)(e), I Order the landlords to return the couch to the tenants.

No receipts or other documents concerning the amount of money paid for the dining table were provided. The tenants testified that they bought the dining table used but did not identify how old the dining table was. Without knowing the age of the dining table, it is not possible to complete a useful life calculation as set out in Residential Tenancy Policy Guideline #40. The tenant's claim for compensation is therefore dismissed as the value of the loss has not been proved.

Pursuant to section 65(1)(e), I Order the landlords to return the dining table to the tenants.

I find that the tenants do not owe the landlords any storage fees for the couch and dining table.

Kids' jeep

I find that the tenants have not provided evidence regarding the value of a three-year-old children's play jeep. I find that the tenants have not proved, on a balance of probabilities, the value of their loss. I therefore dismiss the tenant's claim.

Pursuant to section 65(1)(e), I Order the landlords to return the kids' jeep to the tenants.

I find that the tenants do not owe the landlords any storage fees for the kids' jeep.

Filing fee

I find that since the tenants were successful in their application for the return of person property, they are entitled to recover the $100.00 filing fee from the landlords, pursuant to section 72 of the *Act.*

Conclusion

I Order the landlords to return all of the tenants' personal property to the tenants.

The tenants do not owe the landlords storage fees.

I issue a Monetary Order to the tenants in the amount of $100.00.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, 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: February 03, 2021

Residential Tenancy Branch