



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 21, 2021. The tenant also stated that the package was "unclaimed" and returned by Canada Post to the sender. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to return of personal property?

Is the tenant entitled to a monetary order for compensation, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant stated that the application filed is as a result of the landlord illegally evicting her and her father on December 10, 2020 without serving a notice to end tenancy or as a result of a writ of possession being executed by court bailiffs.

The tenant stated that after being evicted without notice the tenant was not able to retrieve her personal belongings from the property. The tenant had requested return of all of her personal property via written letter with no response by the landlord. In this application however, the tenant did not provide a list of property that she requests be returned by the landlord. The tenant does refer to a written request for two items from the landlord:

Pot/Pan Set
Hydraulic black lacquered stools

The tenant stated that these items were borrowed from a friend and the tenant would like to reclaim them so that she can return them.

The tenant seeks a monetary claim of \$14,931.26 which consists of:

\$145.53	Food/Personal Items
\$1,009.40	Accommodations
\$240.00	Utility Trailer
\$126.00	Trailer Transfer and Insurance
\$89.60	Trailer Hitch
\$825.00	Storage
\$300.00	Estimated 42 inch TV
\$500.00	Xbox, 2 controllers, 6 games
\$89.00	Dirty Devil Vacuum
\$399.99	Dell E-72
\$1,350.00	Snap On Tool Box
\$450.00	Vintage Vise-Grip (X3) \$150/ea.
\$250.00	Beach Top Box, 7 drawer
\$129.99	Mastercraft Drill Press

\$249.95	Estimated	Bosch Beach Top Router Table
\$109.99		24 piece router set
\$69.99		84 piece drill bit set
\$111.99		? piece ratchet
\$114.99		12 piece punch/chisel set
\$89.99		Carving Tool Set
\$179.99		6 piece plyer set
\$39.99		3 piece vise grip
\$47.99		compression tester
\$36.99		vacuum tester
\$7.99		coolant tester
\$64.99		OBO2 meter
\$349.99		steel work bench
\$289.99		Makita Cordless Combo Kit
\$44.99		Screw Driver Set (6)
\$3,425.00	Aggravated Damages	
		\$950.00 Rent/ 2= \$475.00/ 4 weeks= \$118.75
		\$118.75 X 24weeks= \$2,850.00
		\$118.75 X 5 weeks= \$593.70
\$600.00	Security Deposit	

The tenant provided written details which states, "I want to be compensated for loss and damage that were a direct result of being illegally evicted and locked out. I lost many of my belongings, spent 6 months homeless and my dad spent an extra 5 weeks in hospital because he didn't have a home to return to when ready to be discharged. I did not receive an eviction notice, see an order of possession. Landlord changed locks without giving me a key and moved my belongings without the help of a bailiff."

In support of these claims the tenant provided a receipt from Walmart, Shoppers Drug Mart, Travelodge and Storage for:

\$115.94	Walmart
\$29.59	Shoppers Drug Mart
\$745.16	Travelodge Invoice Debit Deposit Balance
\$825.00	Storage, handwritten receipt from a friend

No other invoices/receipts were provided by the tenant.

The tenant stated that after she had vacated the rental unit she paid for accommodations at a cost of \$1,009.40; replaced personal and food items. The tenant stated that she was able to arrange storage for some of her belongings at a friend's place at a cost of \$825.00. The tenant stated that subsequent to that she decided to move to another location and purchased a utility trailer, trailer hitch and paid for the title transfer and insurance.

The tenant also seeks aggravated damages totalling, \$3,425.00. The tenant stated that this was calculated based upon monthly rent of \$950.00 divided by 2 persons equalling \$475.00. The tenant then divided \$475.00 by 4 weeks equalling \$118.75 per week. The tenant stated that she suffered as a result of the illegal eviction for a period of 24 weeks equalling \$2,850.00 while her father who was in hospital for part of the time had suffered for a period of 5 weeks equalling \$593.70.

The tenant also stated that the landlord has not returned their \$600.00 security deposit despite being served with their forwarding address in writing in a letter via Canada Post Registered Mail on August 18, 2020. The tenant stated that since this was served to the landlord the landlord has not returned the security deposit nor has the landlord filed an application to dispute its return.

Analysis

I accept the undisputed affirmed evidence of the tenant and find that the landlord is in possession of a pot/pan set and a set of hydraulic black lacquered stools. I order that the landlord return these items forthwith. In the event that the landlord fails to return these items or they are not available to be returned, the tenant may apply for monetary compensation.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed evidence of the tenant and find that the landlord ended the tenancy without notice or as a result of an order of possession or the

execution of a writ of possession. I find that the tenant has established a claim of \$1,979.93 for:

\$145.53	Food/Personal Items
\$1,009.40	Accommodations
\$825.00	Storage

On the remaining items of claim, I find that the tenant has failed to provide sufficient evidence.

\$240.00	Utility Trailer
\$126.00	Trailer Transfer and Insurance
\$89.60	Trailer Hitch

The tenant has stated that these items were purchased after being evicted to facilitate her moving to another municipality. The tenant has also failed to provide any invoice(s) or receipts for these items. On this basis, the monetary claim for this portion is dismissed.

The tenant's claim for the below listed items has failed. Despite providing testimony that the below listed items were not returned by the landlord, the tenant did not provide sufficient evidence of ownership/possession of these items during the tenancy. The tenant has also not replaced any of these items and provided the estimated cost of each item based upon her experience. No research was done on the actual cost of items nor did the tenant provide any details on the age or condition of each item or how the estimated cost of each item was determined.

\$300.00	Estimated	42 inch TV
\$500.00		Xbox, 2 controllers, 6 games
\$89.00		Dirty Devil Vacuum
\$399.99		Dell E-72
\$1,350.00		Snap On Tool Box
\$450.00		Vintage Vise-Grip (X3) \$150/ea.
\$250.00		Beach Top Box, 7 drawer
\$129.99		Mastercraft Drill Press
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\$7.99	coolant tester
\$64.99	OBO2 meter
\$349.99	steel work bench
\$289.99	Makita Cordless Combo Kit
\$44.99	Screw Driver Set (6)

However, the tenant has provided undisputed evidence that items were not returned to her after written request was made to the landlord and has provided a general list of such items. As such, I grant the tenant an arbitrary nominal award of \$1,000.00.

Residential Tenancy Branch Policy Guideline #16, Compensation for Damage or Loss states in part,

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.*

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.*
- *“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been*

caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case, the tenant seeks “Aggravated Damages” for being illegally evicted without being served with an order of possession or having a writ of possession being executed by bailiffs for \$3,425.00. The tenant basis her calculation on monthly rent and the number of weeks that she was without a home. The tenant was not able to provide any further details on the calculation of this claim.

I accept the undisputed affirmed evidence of the tenant that both her father and her were evicted without notice or order from the Residential Tenancy Branch or any other appropriate legal authority. I find that the tenant has failed to provide sufficient evidence of merit in using this calculation formula for the claim as filed. However, the tenant has provided sufficient evidence of an intangible damage or loss by being evicted without notice. On this basis, I grant an arbitrary nominal award of \$1,000.00.

Section 38 of the Act requires the landlord to either return all of a tenant’s security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, the tenant seeks return of the \$600.00 security deposit paid to the landlord. The tenant provided undisputed affirmed evidence that the tenancy ended on December 10, 2019 without notice or order. The tenant provided undisputed affirmed testimony that she provided the landlord with her forwarding address for return of the security deposit on August 18, 2020 via Canada Post Registered Mail. The tenant further stated that the landlord has not returned the \$600.00 security deposit nor has the landlord made an application to dispute its return. I note for the record that the application for dispute was filed on January 17, 2021 which is within the 2 year limitation period for filing disputes. I also note that based upon the dates provided above from the tenant that the tenant has provided her forwarding address in writing to the landlord within 1 year limitation period as per section 39 of the Act. On this basis, the tenant is entitled to return of the original \$600.00 security deposit.

I also find that the tenant is entitled to compensation under section 38(6) where the landlord is required to pay to the tenant an amount equal to the security deposit for failing to comply with section 38(1) by returning the \$600.00 security deposit or filing an application for dispute of its return. The tenant is entitled to compensation of \$600.00.

The tenant has established a total monetary claim of \$5,1799.93 for:

\$1,979.93	Costs/Expenses
\$1,000.00	Compensation, non-returned items
\$1,000.00	Compensation, aggravated damages
\$600.00	Return of Original Security Deposit
\$600.00	Compensation, Sec. 38 (6) Fail to Comply

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$5,279.93.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: March 31, 2021

Residential Tenancy Branch