



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67. The tenant's monetary claim also seeks the return of the tenant's security deposit.

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 tenant called witness L.S. (the "witness"), who provided affirmed testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Service

The tenant testified that the landlord was served with this application for dispute resolution via email on May 15, 2021. The landlord confirmed receipt on May 15, 2021. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* with the tenant's application for dispute resolution because receipt was acknowledged.

The tenant testified that the only evidence served on the landlord was the tenant's monetary worksheet via email. The landlord confirmed receipt of the tenant's monetary

worksheet. The tenant testified that the other evidence uploaded to the Residential Tenancy Branch website was not served on the landlord.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenant only served the landlord with the monetary worksheet, that is the only evidence submitted by the tenant that will be considered in this decision. The remainder of the tenant’s evidence is excluded for failure to serve the landlord contrary to *Rule 3.14*.

Rule 3.15 of the *Rules* states that the Respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord testified that he did not recall if he served the tenant. The tenant testified that he received the landlord’s evidence via email on September 22, 2021. Based on the tenant’s testimony I find that the tenant was sufficiently served, for the purpose of this *Act*, pursuant to section 71 of the *Act*, with the landlord’s evidence. The landlord’s evidence is accepted for consideration.

Preliminary Issue- Amendment

Both parties agreed in the hearing to the correct address of the subject rental property which is slightly different than the address listed on this application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the tenant’s application to state the agreed address of the subject rental property.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to the return of the security deposit, pursuant to section 38 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 tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 17, 2019 and has ended. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. The tenant and the tenant's co-tenant, who is not named on this application for dispute resolution, paid the landlord a security deposit in the amount of \$1,150.00. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that the landlord did not return his portion of the security deposit, in the amount of \$575.00 and that he is seeking \$575.00 from the landlord. Both parties agree that the tenant has not provided the landlord with his forwarding address in writing.

The tenant testified that he and his common law wife went to visit family out of country just before the COVID 19 lockdown in the start of 2020. The tenant testified that he got stuck out of country and could not get back to Canada to pack up his belongings and move out. The tenant testified that he paid a colleague to pack up his belongings for him from the subject rental property and from the storage locker at the subject rental property. The tenant testified that his colleague packed up all his belongings from the subject rental property but forgot about the storage locker.

Both parties agree that the tenant asked the landlord to affix shipping labels to the boxes packed by the tenant's colleague to help ship the tenant's belongings to him. Both parties agree that the landlord affixed the shipping labels and the tenant's packed belongings were shipped to the tenant.

The tenant testified that after he received his packages, he realized that the items in the storage locker were missing. The tenant testified that he attempted to get into contact with the landlord, but the landlord blocked him. The tenant testified that after several months he was able to get a hold of the landlord and found out that his belongings were stolen from the storage locker. The tenant testified that the landlord did not deal with his personal possessions in accordance with Part 5 of the Residential Tenancy Act Regulation which deals with abandonment of personal property. The tenant testified that

the landlord's failure to comply with the Regulation lead to the theft of his personal possessions.

The tenant is seeking compensation for the following items he testified were stolen from the storage locker:

Item	Amount
Vinyls	\$1,500.00
MPC	\$500.00
Books	\$500.00
Work property	\$1,000.00
Comic books	\$2,000.00
Cell phone	\$130.00
Watch	\$150.00
Total	\$5,780.00

The tenant did not enter into evidence any receipts, quotes, estimates or other proof of the value of the items allegedly stolen from the subject rental property.

The landlord testified that he did his best to help ship the tenant's belongings to him and shipped all the boxes packed by the tenant's colleague. The landlord testified that the tenant never told him about personal possessions in the storage locker when the tenant's other items were being shipped. The landlord testified that when the tenant contacted him about items in the storage locker, he checked and the storage locker was empty and did not have a lock on the door.

The tenant's witness testified that she was the colleague who packed up the tenant's possessions. The witness testified that she forgot to pack up the storage locker. The witness testified that when she was packing up the tenant's belongings, she made several trips to the storage locker to get suitcases. The witness testified that the storage locker was not empty when she left and was locked.

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 applicant 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.

The tenant is claiming \$5,780.00 in damages. The tenant did not enter into evidence any receipts, quotes, estimates or other proof of the value of the items allegedly stolen from the subject rental property. I find that the tenant has not proved the amount of or value of the damage or loss allegedly suffered. Pursuant to my above finding and Policy Guideline 16, the tenant has not proved the third requirement in a claim for compensation under section 67 of the *Act*. The tenant's monetary claim therefore fails and is dismissed without leave to reapply.

Section 88 of the *Act* sets out how documents such as forwarding addresses are to be served:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;

- (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c)by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service prescribed in the regulations.

Both parties testified that the tenant has not served the landlord with his forwarding address. Based on the testimony of both parties I find that the tenant has not served the landlord with his forwarding address in accordance with section 88 of the *Act*.

Section 38 of the *Act* states:

38 (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a)the date the tenancy ends, and
- (b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c),

(d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

- (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice as set out in section 38(1)(b) of the *Act*. Since tenant has not served the landlord with his forwarding address, pursuant to section 38(1)(b) of the *Act*, the tenant's application for the return of the security deposit is dismissed with leave to reapply. If the tenant wishes to make this claim in the future, the tenant must first serve the landlord with his forwarding address in writing. The tenant must be able to prove service of the forwarding on the landlord, in accordance with section 88 of the *Act* at any subsequent hearing.

I note that section 39 of the *Act* states:

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.

Conclusion

The tenant's application for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*, is dismissed without liberty to reapply.

The tenant's application for the return of the security deposit is dismissed with 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: November 1, 2021

Residential Tenancy Branch