



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, RPP

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;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package in person on June 15, 2021. The landlord disputed this stating that the package was found "in the door handle" after returning home. Based upon the undisputed affirmed testimony I find that despite a dispute on the form of service both parties confirmed the landlord received it on the date stated by the tenant. Neither party has made any submissions on being unable to proceed with the hearing. On this basis, the landlord is deemed served as per section 90 of the Act.

The tenant confirmed that no documentary evidence was submitted. The landlord stated that she served the tenant with the submitted documentary evidence via Canada Post Registered Mail on December 5, 2021 and has referenced a submitted copy of a Canada Post Receipt dated December 5, 2021 as confirmation. The landlord was not able to provide any evidence regarding actual service of the package. Both parties consented to the Arbitrator reviewing the Canada Post Online Tracking history of the package. The review showed the package was received for processing on December 5, 2021 by Canada Post and went out for delivery on December 6, 2021 to the tenant's listed address where a notice card was left for the tenant to pick up the package at the local postal office. The online review also shows that as of the date of this hearing the

package was still available at the local post office for pick up. In this case, I accept the direct testimony of both parties and find on a balance of probabilities that the tenant was properly served as per section 88 of the Act. Despite the tenant not receiving the package the tenant is deemed to have been sufficiently served as per section 90 of the Act. Both parties were advised that where the landlord would reference an evidence document that the contents would be described in detail to the tenant and an opportunity given to ask questions about the document.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, the tenant's application was clarified. The tenant confirmed that he was not seeking compensation as a result of the landlord failing to occupy the rental unit as a result of a 2 month notice for landlord's use. The tenant stated that after receiving the notice the landlord had changed the locks to prevent him from entering. The tenant stated that he only wanted the return of his belongings or monetary compensation for those missing items. On this basis, the first part of the tenant's application was dismissed. The hearing shall proceed on the tenant's request for return of personal property or compensation for those items.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

Is the tenant entitled to an order for the landlord to return personal property?

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.

This tenancy began on March 1, 2021 on a fixed term tenancy ending on August 31, 2021 as per the submitted copy of the signed tenancy agreement dated February 28, 2021. The monthly rent was \$1,250.00 payable on the 1st day of each month and a security deposit of \$625.00 was paid.

The tenant also seeks an order requiring the landlord to return personal property of the below noted items or compensation for the listed amounts.

15 pairs of jeans	\$500.00
10 shirts	\$500.00
Work boots	\$200.00
3 pairs of runners	\$300.00
4 jackets	\$800.00
Iphone 10	\$700.00
Cologne	
Bathroom stuff	
Food, plates	
Cutlery	
Computer	\$1,500.00

The tenant claims that he was served with a 2 month notice to end tenancy on May 10 or 11th of 2021. The tenant stated that before he could respond he was locked out the next day on May 12, 2021 when the landlord had changed the locks.

The landlord disputes the tenant's claims stating that she does not have any of the items listed by the tenant. The landlord stated that the tenant had moved out on May 6, 2021 without any notice over a 2 hour period. The landlord stated that the tenant did not provide a forwarding address to the landlord.

The tenant stated that he had looked online on May 12, 2021 to locate his iphone 10, which the tenant stated was located on the rental property. The tenant stated that he did not provide any proof of this claim. The tenant also stated that he had contacted the police regarding the incident but was told that this was not a criminal matter regarding his personal property.

Analysis

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.

Section 65 (1) (e) also states that any personal property seized or received by a landlord must be returned.

The tenant seeks the return of the items or compensation equal to \$4,500.00.

I find based upon the disputed affirmed testimony of both parties that the tenant has failed to establish that the landlord is in possession of the above noted 11 items listed. The tenant provided direct testimony that he was locked out and that his personal belongings were being held by the landlord. The landlord disputed this claim arguing that the tenant had vacated the rental unit without notice and that the rental was left with only miscellaneous garbage items.

I also note for the record that the tenant's claim was originally for compensation under section 51 of the Act which was clarified as being made in error. In that portion of the tenant's claim the tenant also referenced \$5,800.00 consisting of \$630.00 in cash, 2 gold rings valued at \$2,800.00 and 1 necklaced valued at \$2,370.00 that was in the rental unit. Regarding these items and the above noted 11 listed missing personal property, the tenant has failed to provide any details (description) of these items or any basis for their value. Neither party submitted any substantive documentary evidence regarding this claim. On this basis, the tenant has failed to provide sufficient evidence to satisfy me that the landlord is in possession of any of these items or the corresponding values listed.

Conclusion

The tenant's application is dismissed 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: January 20, 2022

Residential Tenancy Branch