



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for monetary compensation pursuant to s. 67; and
- Return of her filing fee pursuant to s. 72.

C.A. appeared as Applicant and is the former tenant of the subject rental unit. The Respondent landlords did not attend, nor did anyone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Respondents did not attend, the hearing was conducted in their absence as provided for by Rule 7.3 of the Rules of Procedure.

The Applicant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Applicant confirmed that she was not recording the hearing.

The Applicant advised that she served the Notice of Dispute Resolution and her evidence on the Respondents by way of registered mail sent on November 6, 2021. The Applicant provides a copy of the registered mail tracking number and advised that the package was returned to her as it was not picked up by the Respondents.

The dispute is in relation to a tenancy that ended on October 31, 2019. The Applicant advised that the rental unit was a basement unit and the Respondent landlords lived upstairs. The residential property is a detached house. The Applicant advised that the registered mail was sent to the residential property. She further confirmed that she drove-by the residential property recently and saw that the Respondents’ vehicles, as she remembered them, were parked outside the residential property.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Applicant is entitled to serve the Notice of Dispute Resolution and her evidence by way of registered mail in accordance with s. 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*.

I accept that the Notice of Dispute Resolution and evidence was sent to the Respondent's mailing address and further accept that the Respondents continue to reside at the residential property based on the Applicant's affirmed testimony that their vehicles are still parked out front. I find that the Notice of Dispute Resolution and evidence were served in accordance with s. 89 of the *Act* by way of registered mail sent on November 6, 2021. Pursuant to s. 90 of the *Act*, I deem that the Respondents were served with the Applicant's application materials on November 11, 2021.

Preliminary Issue – Limitation Period

Under s. 60 of the *Act*, an applicant must advance their claim within two-years of the date the tenancy to which the matter relates ends or is assigned. The Applicant confirmed that the tenancy ended on October 31, 2019.

Pursuant to Rule 2.6 of the Rules of Procedure, an application is considered to have been made when the application is submitted to the Residential Tenancy Branch and the application fee is paid. Upon review of the records with the Residential Tenancy Branch, I find that the present application was submitted, and the fee was paid, on October 31, 2021.

Accordingly, the Applicant made her application on the very last day permitted to her under the *Act*. The limitation period is not applicable under the circumstances.

Issue(s) to be Decided

- 1) Is the Applicant entitled to monetary compensation?
- 2) Is the Applicant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Applicant confirmed that the tenancy began on June 1, 2019 and, as mentioned above, that the tenancy ended on October 31, 2019 when she moved out. Rent of \$1,050.00 was due on the first day of each month and she had paid a security deposit of \$525.00 to the Respondents. The security deposit was returned to the Applicant some time ago.

A copy of the written tenancy agreement was put into evidence by the Applicant.

The Applicant indicates that her rental unit comprised a basement unit which was accessible from the outside through a covered patio area. The Applicant confirmed that at the outset of the tenancy, she was told that the covered patio area was hers to use. Photographs were provided by the Applicant, which show the entrance to the rental unit, the covered patio area, and the backyard that was adjacent to the covered patio. The patio is covered by a deck, which is accessible to the main floor portion of the property.

As mentioned above, the Applicant advised that the Respondent landlords lived above her on the main floor. The Applicant indicates that the Respondents had dogs, which they let out into the backyard to both exercise and to relieve themselves.

The Applicant set some of her belongings in the covered patio area and discovered in approximately August 2019 that the Respondents' dogs had been urinating on her personal belongings. She described the items as "urine soaked" and indicates that by the time she discovered her belongings had been urinated on by the dogs they had already been damaged to the point of no return.

She describes several items that were beyond repair due to the urine damage. The items, including the value of the items as estimated by the Applicant, include the following:

Item	Value Estimated by Applicant
Six-foot tall silk ficus tree	\$225.00
Set of golf clubs	\$250.00
Wilson Golf Bag	\$50.00
Golf balls, leather glove, and tees	\$25.00
Wooden Shelf	\$150.00
Two Lawn chairs	\$50.00
Total	\$750.00

The Applicant indicates that the values listed above were obtained by way of her memory of what they were purchased for, internet searches for their value, and some depreciation. Photographs of the items were provided by the Applicant.

The Applicant describes that the items smelt of dog urine, that the urine had soaked into the fabric of the chairs, the golf bag, the wood for the shelves, and the grips for the golf clubs. She indicates that the pot for the silk ficus tree was filled with urine.

As the Applicant describes, she had discussed the issue with the Respondents and that nothing was done to remedy the dog's urinating on her personal belongings. The Applicant further indicated that the items were left behind at the rental unit when she vacated the property due to their smell and the damage.

The Applicant further describes that during the final walkthrough, she and the Respondents discussed the items that were left behind. The Respondents looked to have the cost of disposing of the items paid by the Applicant, the Applicant indicates that she was asking for compensation from the Respondents for the damage she says was done by their dogs. It does not appear that anything came of the conversation and the items remained at the rental unit after the final walkthrough.

Analysis

The Applicant seeks compensation for property damage she says was caused by the Respondent landlords' dogs.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Based on the undisputed testimony of the Applicant, I accept that she had exclusive possession of the covered patio in front of her rental unit and that the Respondent landlords told her the outdoor space was hers to use. I further accept the Applicant's testimony that the dogs did urinate on her personal belongings.

Pursuant to s. 28 of the *Act*, a tenant has a right to the quiet enjoyment of their rental unit and the areas for which they have exclusive possession. I find that the Respondents are responsible for their dogs and that their entry into the covered patio, which comprises the portion of the rental that the Applicant had exclusive possession, constitutes a breach of the Applicant's right to the quiet enjoyment. I find that this breach also resulted in damage to the Applicant, in the form of property damage caused by the dogs urinating on her personal belongings. I accept the Applicant's undisputed testimony that the extent of the urination was such that the items could not be cleaned and were beyond salvage.

The primary issue with the present matter is the valuation of the Applicant's loss. The Applicant bears the burden of quantifying her loss under s. 67 and at present she has provided her best estimates of the value of the items. Though the issue of depreciation was discussed by the Applicant, some of the items listed appear to represent the replacement cost, which is a form of betterment prohibited by Policy Guideline #5. Compensation for property damage is for the market value of the item, which best represents the value of the item that was lost. The Applicant failed to demonstrate when the items were purchased and what they were purchased for.

Accordingly, I find that the value lost for the damaged items is as follows:

Item	Value
Six-foot tall silk ficus tree	\$150.00
Set of golf clubs	\$150.00
Wilson Golf Bag	\$50.00
Golf balls, leather glove, and tees	\$25.00
Wooden Shelf	\$50.00
Two Lawn chairs	\$50.00
TOTAL	\$475.00

I make these findings based on the photographs of the items provided by the Applicant and their general age and appearance.

I accept the Applicant's evidence that she could not have mitigated her damages under the circumstances based on the undisputed evidence that she first discovered the damage had occurred in August 2019, by which point the damage had already been done.

I find that the Applicant has demonstrated a monetary claim in the amount of \$475.00.

As the Applicant was successful in her application, I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Respondents pay the Applicant an additional \$100.00 for her filing fee.

Conclusion

I find that the Applicant has demonstrated a monetary claim in the amount of \$475.00.

I make a total monetary order taking the following into account:

Item	Amount
Monetary Claim for property damage	\$475.00
Applicant's filing fee to be paid by the Respondents pursuant to s. 72(1)	\$100.00
TOTAL	\$575.00

Pursuant to s. 67 of the *Act*, I order that the Respondents pay **\$575.00** to the Applicant.

It is the Applicant's responsibility to serve the monetary order on the Respondents. If the Respondents do not comply with the monetary order, it may be filed by the Applicant with 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 09, 2022

Residential Tenancy Branch