



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 377299 BC Ltd. (dba Pass Motor Inn) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OJT, RPP, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an arbitrator to determine whether the RTB has jurisdiction over his tenancy; for an order for the Landlord to return the Tenant's personal property; and for a monetary order of \$3,994.00 for damage or compensation under the Act.

The Tenant, his advocate, K.S. ("Advocate"), and an agent for the Landlord, P.B. ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. A senior legal advocate with the Advocate, D.D., observed the hearing, until he had to leave for another meeting. He did not testify.

During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agent said the Landlord had received the Tenant's Application and documentary evidence, and had reviewed it prior to the hearing. The Agent confirmed that the Landlord had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed

these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's legal name, as the Tenant had identified the Landlord by the name of a motel, which is not a legal name, but a "doing business as" name. The Agent advised me of the corporate name of the Landlord, and accordingly, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Jurisdiction

The Tenant said that the residential property in which he lived until August 10, 2021, is a motel. He said he lived there for a year and that he paid \$1,000.00 a month in rent. The Tenant said that the rent amount did not differ depending on the time of year. He said that he paid the Landlord a \$500.00 security deposit, although he said the Landlord returned \$200.00 of this deposit. The Tenant said that he did not have any residence elsewhere that he considered a home.

The Advocate directed me to evidentiary submissions of the Tenant's mail from government institutions showing the motel room as being the Tenant's residential address.

The Act sets out what it does and does not apply to in sections 2 and 4.

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

In contrast, section 4 sets out what the Act does not apply to. Section 4 states:

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
 - (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
 - (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
 - (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
 - (e) living accommodation occupied as vacation or travel accommodation,**
 - (f) living accommodation provided for emergency shelter or transitional housing,
 -
- [emphasis added]

RTB Policy Guideline 27, “Jurisdiction” (“PG #27”) states:

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- Whether the agreement to rent the accommodation is for a term;
- Whether the occupant has exclusive possession of the hotel room;
- Whether the hotel room is the primary and permanent residence of the occupant.
- The length of occupancy.

Even if a hotel room is operated pursuant to the Hotel Keeper’s Act, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation

Based on the evidence before me, I find that the Tenant was not using the motel room as vacation rental or travel accommodation. Further, it was his primary residence while living there. I find that the details of the Tenant's agreement with the Landlord about the rent, the length of his stay, and his exclusive possession of the unit denote that it is a rental unit within the jurisdiction of the Act. Given these conclusions, I find that this matter fits within the jurisdiction of the Act and the RTB, pursuant to sections 2 and 4 of the Act, and PG #27.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Should the Landlord be ordered to return the Tenant's personal property, and if so, what personal property?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on August 10, 2020, and that it ran to August 10, 2021, with a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit. The tenancy ended on August 10, 2021, and the Advocate said that the Tenant provided his forwarding address in writing to the Landlord by registered two weeks prior to the hearing.

A. MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$3,994.00

The Tenant provided the following list of his monetary claims, which we reviewed consecutively in the hearing.

	Receipt/Estimate From	For	Amount
1	Cost of new place	Illegal eviction - homeless	\$3,000.00
2	Second hand	[A.] Desk Top Computer	\$ 350.00
3	Second hand	[S.] Screen	\$ 100.00

4	Second hand	[S.] Smart TV	\$ 300.00
5	[International retailer]	Jeans x 6	\$ 66.00
6	[International retailer]	T-shirts x 7	\$ 30.00
7	[International retailer]	Underwear x 6 packs	\$ 72.00
8	[International retailer]	Socks 6 pairs	\$ 15.00
9	[International retailer]	Winter jacket	\$ 25.00
10	[thrift store]	Boots	\$ 6.00
11		Sneakers	\$ 30.00
12	Security Deposit	Remaining amount owed	\$ 300.00
		Total monetary order claim	\$4,294.00

#1 COST OF NEW PLACE – ILLEGAL EVICTION → \$3,000.00

The Advocate explained the Tenant's first claim, as follows:

He was paying \$1,000.00 a month, but he ended up displaced to a shelter. They only had a common room, and his oxygen tank was repeatedly unplugged by other occupants at night, because it was noisy. It took him two months to find a new place to live. \$3,000.00 was for the two months (\$1,000.00 each) and for the security deposit and first month's rent. The claim is for his security deposit and moving expenses.

The Agent responded:

I believe that I talked to a contact for the previous Landlord. They said they believed no one had a \$500 deposit. When we took over, most of the tenants had about a \$100.00 deposit.

She said \$3,000.00 for moving. He's in a new place at [address provided]. I feel he is staying in a brand-new building. He is paying is only \$375.00 – we should not have to pay \$3,000.00.

The Advocate said: "He's paying \$375.00, because he is in supportive housing."

#2 DESK TOP COMPUTER → \$350.00

I asked the Advocate why the Landlord is responsible for paying for the Tenant's computer, and she said:

Because [the Landlord] disposed of it in the dumpster. He threw everything on that list away. So, [the Tenant] had just moved from back east to [the city]. And all of his belongings were disposed of by this Landlord

In answer to my questions about the source of this amount, the Advocate said:

[The Tenant] does not have receipts for these items, and he did not have a bank account, so we contacted source statements. Everything on the list is based on what he could remember.

I asked if the Tenant purchased a new computer, and she said: "He has a new laptop he bought for \$400.00. He bought the original second hand."

The Agent said he had no comment for the Landlord about this claim.

#3 COMPUTER SCREEN → \$100.00

The Advocate said that this claim has the same basis as the last claims - because the Landlord threw the Tenant's belongings into a dumpster. The Advocate said that when the Tenant first came to the city, he had purchased these items the month before. She said: "The clothing, the socks, a winter jacket – some still with tags on were thrown into this dumpster."

The Agent had no comment on this claim.

#4 SMART TV → 300.00

In answer to my question about why the Landlord should pay for the Tenant's television, the Advocate explained that it was for the same reason as the other claims.

#5 – 12 – VARIOUS CLOTHES → \$244.00

The Tenant claimed a list of clothing that he needed to replace, because he said the Landlord threw them in the dumpster. The Advocate said that the Tenant purchased

these items at as low cost as possible.

The Agent did not have any comments about these claims.

B. ORDER FOR THE RETURN OF TENANT'S PERSONAL PROPERTY

The Advocate explained this claim by saying that when he applied, the Tenant was hoping that if he was able to get jurisdiction, he could ask for his personal property back; however, since it has been over a year, he does not expect anything like that at this time. The Tenant knows that it is more likely than not that his personal property is gone, since it was put in the dumpster by the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

A. MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$3,994.00

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to establish that compensation is due." [emphasis added]

The Agent did not deny that the Landlord threw out the Tenant's personal property from the rental unit. He, primarily, had no comment about these claims.

Rule 6.6 sets out the standard and burden of proof in this administrative hearing, as follows:

Rule 6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. . . .

I acknowledge that the Tenant is in ill health, and may be of a marginalized population.

However, he is still required to prove his claim, and supporting documentary evidence would have been very helpful. However, a party cannot claim compensation for items without any evidence to support how much the items cost

A party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. PG #16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

(“Test”)

The undisputed evidence before me is that the Tenant and his belongings were removed from the residential property without due process. I find that the Tenant has proven the first step of the Test, that the Landlord violated the Tenant’s right pursuant to section 26, which states:

26 (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant’s access to the tenant’s personal property.

[emphasis added]

I find that the Landlord’s disposal of the Tenant’s personal property caused the Tenant to incur damage or loss, as a result, which meets the second step of the Test.

However, I find that the Tenant has not provided any evidence supporting the amounts he is claiming for the items he replaced. As such, I find that the Tenant has failed the third step of the Test.

Nevertheless, a section of PG #16 says that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. One such award is “Nominal Damages”, which is defined by PG #16 as

follows:

- “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.

I have found that the Tenant incurred a loss, and I find it appropriate to compensate the Tenant for a portion of his loss, notwithstanding the absence of receipts for his purchases. In the circumstances, I find that a nominal award of the rental amount the Tenant paid at the residential property is an appropriate amount. As such, I award the Tenant \$1,000.00 for his losses caused by the Landlord’s breach of section 26 of the Act, pursuant to sections 62 and 67.

The Tenant’s claim for the return of his personal property is dismissed without leave to reapply.

Conclusion

The Tenant is partially successful in his Application. To start, I found that the RTB has the jurisdiction to hear the Tenant’s Application.

The Tenant’s claims for compensation were not successful for the amounts claimed, as the Tenant failed to provide sufficient evidence to support the amounts claimed. However, as I found that the Tenant suffered a loss, he was awarded nominal damages of \$1,000.00 from the Landlord.

Pursuant to section 67 of the Act, I grant the Tenant a **Monetary Order of \$1,000.00** from the Landlord. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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 18, 2022

Residential Tenancy Branch