



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, MNDCT, MNSD, RPP

Introduction

This hearing originally convened on December 2, 2021 and was adjourned to March 18, 2022 due to time constraints. This decision should be read in conjunction with the December 2, 2021 Interim Decision. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for the landlord to return the tenant's personal property, pursuant to section 65; and
- a Monetary Order for the return of the filing fee, pursuant to section 72.

The tenant, the landlord and the landlord's agent attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. An interpreter for the tenant also attended both hearings and the interpreter in each hearing affirmed to translate to the best of their ability from the English language into the Mandarin language and from the Mandarin language into the English language.

Total hearing time for the two hearings was three hours and four minutes. The tenant was provided a full opportunity to set out each monetary claim made in his application for dispute resolution, the landlord was provided with a full opportunity to reply to each claim and the tenant was provided with an additional opportunity to respond to the landlord's/agent's testimony. Following the above, both parties were provided with a final opportunity to:

- provide any further new and relevant testimony,
- to present any further evidence they may have missed, and
- to present closing submissions and arguments.

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

Both parties agree that the tenant personally served the landlord with a copy of this application for dispute resolution and amendment on August 19, 2021. The amendment changed the tenant's primary address. I find that the landlord was served in accordance with section 89 of the *Act*.

Both parties agree that the tenant left a copy of his evidence in the landlord's mailbox on November 15, 2021. The landlord testified that the evidence was received on November 15, 2021. I find that the tenant's evidence was served in accordance with section 88 of the *Act*.

During the hearing I described several photographs entered into evidence by the tenant. The agent testified that some of the photographs were not provided in the tenant's evidence package served on the landlord. The agent confirmed that a number of photographs were included in the tenant's evidence package and was able to provide accurate descriptions of some of the photographs. The tenant did not provide documentary evidence to prove what documents were included in the evidence package left in the landlord's mailbox on November 15, 2021.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Residential Tenancy Branch Rules of Procedure Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

[Emphasis added]

I find that the tenant has not proved, on a balance of probabilities, what pieces of evidence were included in the November 15, 2021 package. I therefore exclude from consideration the photographs the agent testified were not received by the landlord.

The landlord testified that he did not serve the tenant with any evidence. No landlord evidence was uploaded for consideration.

Both parties were advised that pursuant to Rule 7.4 of the Residential Tenancy Branch Rules of Procedure, evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not present their evidence, it may not be considered.

Preliminary Issue- Amendment

The tenant's updated application for dispute resolution dated August 15, 2021, seeks a monetary award of \$11,811.00. The tenant submitted as evidence a monetary worksheet dated November 15, 2021. The monetary worksheet seeks a monetary award of \$13,811.00. The additional \$2,000.00 sought is for mental compensation that was not claimed in the August 15, 2021 updated application for dispute resolution. The tenant did not file an amendment with the Residential Tenancy Branch to add the \$2,000.00 claim for mental compensation.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure state that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that the landlord could not reasonably have anticipated that the tenant would seek an additional \$2,000.00 for mental compensation not claimed in the August 15, 2021 updated application for dispute resolution, based solely on the monetary worksheet dated November 15, 2021 included in evidence. I therefore decline to amend the tenant's application and will only adjudicate the tenant's claim for damages as stated on the tenant's August 15, 2021 updated application for dispute resolution.

Preliminary Issue- Security Deposit

Both parties agreed that the landlord was granted authorization to retain the tenant's entire security deposit in a previous arbitration. The file number for the previous arbitration is located on the cover page of this decision. As the security deposit has already been adjudicated, I find that the matter is *res judicata* and cannot be re-argued. The tenant's claim for the return of the security deposit is therefore dismissed without leave to reapply.

Issues

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 an Order for the landlord to return the tenant's personal property, pursuant to section 65 of the *Act*?

3. Is the tenant entitled to a Monetary Order for the return of the filing fee, pursuant to section 72 of the *Act*?

Background/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 March 12, 2021 and ended on August 19, 2021 pursuant to an Order of Possession issued by the Residential Tenancy Branch. Monthly rent in the amount of \$800.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord. This was an oral tenancy agreement; no written tenancy agreement was drafted. The subject rental property is a basement suite in a house and the landlord resides above the subject rental property in the main portion of the house.

Both parties agree that in the previous arbitration, the arbitrator found that the tenant failed to pay rent and pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent, the landlord was granted an Order of Possession. The previous decision is dated August 6, 2021. Both parties agree that the landlord was also granted a Monetary Order for unpaid rent from April 2021 to the date of the previous arbitration, that being August 6, 2021. The file number for the previous decision is located on the cover page of this decision. The file number was provided in the tenant's application for dispute resolution.

Tenant's Monetary Claim

The tenant's application for dispute resolution seeks the following damages from the landlord:

<u>Item</u>	<u>Amount</u>
Loss of business income	\$9,000.00
Car tire repair costs	\$1,500.00
Bedding and clothes	\$600.00
Cooking equipment	\$200.00
Food	\$200.00

Internet telephone and related expenses	\$255.00
Radio	\$50.00
Facial tissue	\$6.00
Total	\$11,811.00

Loss of business income

The tenant testified that when he moved into the subject rental property the landlord included internet in the rent and provided him with the landlord's password for internet. The tenant testified that the landlord also agreed to install the hardware for his internet phone in the landlord's unit, so that the tenant could use the internet phone in the subject rental property. In support of this testimony the tenant uploaded a file he titled "The_landlord_agreed_to_install_my_landline_phone_in_his_home". The file is a text message in Mandarin, no translation was provided. The text message was not presented in the hearing.

The tenant testified that the landlord changed the internet password on March 31, 2021 which prevented him from using the internet and his internet phone. The tenant testified that the landlords refused to allow him to set up his own internet at the subject rental property. The tenant testified that Shaw attended on three occasions to install internet, but the landlord denied them entry each time and locked the access box. No documentary evidence to support the above testimony was provided.

The tenant testified that he uses his internet phone to contact his business clients and that without access to his internet phone, his business income was completely cut off. The tenant testified that the landlords prevented him from earning income for the five months he resided at the subject rental property without internet. The tenant testified that during COVID, his average monthly income was \$1,800.00 per month. \$1,800.00 per month for five months equals \$9,000.00 which the tenant is seeking from the landlord. No documentary proof of income such as bank statements, income tax records, pay slips etc were entered into evidence. No documentary proof relating to business income was provided whatsoever.

The agent testified that the agreement was for the tenant to hook up his own internet but that the landlord would allow the tenant to use the landlord's internet for the month

of March 2021 to allow the tenant time to have internet installed. The agent testified that the landlord never agreed to install internet phone hardware and no phone hardware was installed. The agent testified that the landlord did not prevent Shaw cable from installing internet at the subject rental property, but the landlord did prevent a man, who was not wearing a uniform, from opening the locked internet box.

The agent testified that the tenant has not proved his loss of business income as no proof of income was entered into evidence. The agent testified that the tenant could have gone elsewhere to gain access to the internet or a phone.

Bedding, clothes, cooking equipment, food, internet telephone and related expenses, radio and facial tissue

The tenant testified that the landlord stole bedding, clothes, cooking equipment, food, his internet phone, a radio and facial tissue from the subject rental property. The tenant testified that he is seeking the landlord to return the above items, not including the food, and if the items cannot be returned, he is seeking the following financial compensation for them:

- Bedding and clothes- \$600.00
- Cooking equipment- \$200.00
- Telephone and related expenses- \$255.00
- Radio- \$50.00
- Facial tissue- \$6.00

The tenant testified that he is seeking \$200.00 for the cost of stolen food. The tenant testified that the landlord has retained the hardware for his internet phone that was installed in the landlord's unit. The tenant did not enter into evidence receipts or estimates for the above claimed expenses.

The tenant testified that he believes the landlord stole the above items while he was out because the landlord and his wife entered his suite many times without his permission. The tenant testified that he called the police regarding the thefts. The tenant entered into evidence photographs of an empty fridge, an empty stove top, and a charging base for a cordless phone. The tenant entered into evidence other photographs in which the cordless phone can be seen on the base.

The tenant testified that the landlords removed a security lock on his door to facilitate breaking in. The tenant testified that the security latch could only be latched from inside the unit. A photograph uploaded by the tenant regarding the security lock was excluded from consideration because the agent testified that it was not received by the landlord and the tenant failed to prove it was properly served.

The agent testified that the landlord and his wife did not steal anything from the tenant and that the tenant never installed anything in the landlord's unit. The agent testified that the tenant has called the police for the alleged theft and that no charges were laid because the landlord did not steal anything. The agent testified that the tenant called the police over ten times on the landlord and the police stopped talking to the landlord about the allegations because they were all false.

The agent testified that prior to the tenant moving in, a security lock that could only be latched when a person was at home inside the unit was removed. The agent testified that its removal would not help the landlord break in when the tenant was not home as it could only be latched when the tenant was home.

The tenant entered into evidence a photograph dated June 9, 2021 of the landlord's wife standing in the doorway of the subject rental property with the landlord standing behind and filming the interaction. The tenant testified that the photograph shows the landlord's wife entering the subject rental property without his permission. The agent testified that the landlord and his wife attended at the request of the tenant so that they could look at his toilet. The agent testified that the landlord is filming the interaction because of all the false accusations made by the tenant and filmed to prove that no assaults etc took place when they attended at the subject rental property.

The tenant uploaded photographs taken from inside the subject rental property looking out through the windows. The agent testified that the photographs were not served on the landlord. I exclude these photographs from consideration because the agent testified that they were not received by the landlord and the tenant failed to prove they were properly served.

The tenant testified that the landlords were frequently outside his windows filming him and taking pictures of him. The agent testified that the landlord filmed all of their interactions with the tenant to prevent the tenant from making false accusations to the police regarding their interactions. The agent testified that the landlords would ask for the rent money through the windows when the tenant refused to answer the door. The

agent testified that the tenant did not pay rent from April 2021 until the end of the tenancy.

Car tire repair costs

The tenant testified that the landlord or someone associated with the landlord punctured his tires six times. Photographs of tire punctures were entered into evidence. The tenant testified that he is seeking \$250.00 per instance for the repair of the tires. The tenant entered into evidence a receipt dated July 7, 2021 for three used tires for temporary use with one week warranty only, in the amount of \$250.00. The tenant entered into evidence a receipt dated August 13, 2021 for two used tires for temporary use, in the amount of \$156.80.

The tenant's claim for the cost of repairing his tires is for \$1,500.00. The tenant testified that he does not have receipts for all of the repairs because the repair shop did not always give him a receipt.

The tenant testified that he has witnesses to prove his claim. I asked the tenant to call his witness(es). The tenant testified that he doesn't not have their contact information and that he would need more time to speak to them and ask them to testify.

Rule 7.19 of the Residential Tenancy Branch Rules of Procedure states:

Parties are responsible for having their witnesses available for the dispute resolution hearing. A witness must be available until they are excused by the arbitrator or until the dispute resolution hearing ends.

In the hearing I informed the tenant that he was responsible for having his witness(es) arranged in advance of the hearing and was responsible for having them call in at the designated time. I declined to grant to the tenant extra time as the tenant had approximately 4 months between application and the first hearing to arrange his witness(es) and a further 3.5 months between the adjourned hearings to arrange his witness(es). I informed the tenant that he had ample opportunity to arrange for his witnesses to attend and would not be granted extra time.

The tenant testified that he believes the landlord or an associate of the landlord damaged his tires because the damage to his tires started on May 2, 2021 when the landlord and the landlord's associates assaulted him. No medical or police records to substantiate this claim were entered into evidence. The only medical records entered into evidence were from September 20, 2021 and November 8, 2021; however, these

medical records were not presented and are from after the tenant moved out and refer to dates after the tenant moved out.

The tenant testified that on May 2, 2021, the landlord together with a few friends beat him up. The tenant testified that the police were called but they did not speak Chinese so he could not make a statement. The tenant entered into evidence a picture of police vehicles. The tenant testified that on that day, a group of approximately six people surrounded his vehicle and punctured his front right tire. The tenant entered into evidence photographs of a punctured tire.

The tenant testified that on the evening of May 2, 2021 he was afraid to return to his residence. The tenant testified that he was escorted home by two police officers. The tenant testified that he barricaded himself in the subject rental property.

The tenant testified that on June 12, 2021 the landlord's wife chased him and beat him up causing his face to be red and swollen. The tenant entered into evidence a photograph of his face. The tenant's face is slightly reddish in colour. The tenant testified that he saw a doctor the following day; however, the tenant did not provide any documentary evidence to prove this visit.

The tenant testified that when he came back from the doctor's the landlord dropped a broom from above and it almost hit him. The tenant testified that the landlord apologized, but he believes it was done intentionally.

The tenant testified that on one occasion when he returned to the subject rental property in the evening, the landlord poured cold water on him. The tenant testified that the next door neighbor witnessed the water being poured on him. The tenant did not call the neighbor as a witness or provide a witness statement from the neighbor. The tenant testified that on two occasions the landlord aimed his hose at him and tried to get him wet. The tenant entered into evidence a photograph dated July 18, 2021 taken through a wet window, a person can be seen watering the lawn through the window.

The tenant testified that he has witnesses who saw him being hit, witnessed the damage caused by the landlord and helped him afterwards. I invited the tenant to call his witness(es). The tenant testified that its challenging to call witnesses and that he needs more time.

In the hearing I informed the tenant that he was responsible for having his witness(es) arranged in advance of the hearing and was responsible for having them call in at the designated time. I declined to grant to the tenant extra time as the tenant had approximately 4 months between application and the first hearing to arrange his witness(es) and a further 3.5 months between the adjourned hearings to arrange his

witness(es). I informed the tenant that he had ample opportunity to arrange for his witnesses to attend and would not be granted extra time.

The agent testified that because the tenant did not pay rent from March to August 2021 the relationship between his parents and the tenant was not amicable, but it was not violent. The agent testified that his parents demanded rent whenever they saw him, but they did not assault him or damage his tires.

The agent testified that the tenant has called the police on the landlord many times and that each time he has accused his the landlord and the landlord's wife of assault. The agent testified that each time the police have determined that the tenant's allegations were unsubstantiated. The agent testified that no charges have been laid against the landlord or the landlord's wife.

The agent testified that he spoke with the police when they attended on May 2, 2021 and the police told him that the tenant has a history of calling the police to generate file numbers to help in Residential Tenancy disputes.

The agent testified that the landlord's wife did not strike the tenant and the photograph of the tenant's face entered into evidence does not prove anything. The tenant testified that the tenant does not have medical documentation showing physical or mental harm.

The agent testified that the landlord and the landlord's wife have never sprayed the tenant with water or dropped water on the tenant. The agent testified that the tenant is lying as he lied in the previous hearing. The agent testified that in the previous decision the arbitrator found the tenant's version of events to be untrue and accepted the landlord's testimony. The August 6, 2021 decision confirms same.

The agent testified that landlord and the landlord's wife did not damage the tenant's tires or have someone else damage them. The agent testified that the tenant parks on the street approximately one block away from the subject rental property and that anyone could have damaged the tenant's car. The tenant did not dispute parking on the street one block from the subject rental property.

The agent testified that the tenant has not provided any evidence that the landlord or the landlord's wife had any involvement with the punctured tires.

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.

Loss of business income

The third test for a successful monetary claim, outlined in Residential Tenancy Policy Guideline #16, is:

the party who suffered the damage or loss can prove the amount of or value of the damage or loss.

The tenant did not enter into evidence any documentary proof regarding the alleged loss of business income. I find that the tenant has failed to prove the value of the alleged loss. I dismiss the tenant's claim for loss of business income without leave to reapply for failure to prove the value of the loss.

Bedding, clothes, cooking equipment, food, internet telephone and related expenses, radio and facial tissue

The tenant testified that the landlord stole bedding, clothes, cooking equipment, internet phone hardware, food, radio and facial tissue. The agent testified that the landlord did not steal the above items. The tenant entered into evidence photographs showing the absence of some of the above listed items.

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the applicant bears the burden of proof. I find that the tenant has not proved that the landlord broke into the subject rental property and stole the above items. I find the photograph of the landlord and landlord's wife dated June 9, 2021 proves that the landlord and his wife attended at the subject rental property on that date, but does not prove that they entered without permission or stole items while the tenant was away.

Photographs showing an empty fridge do not prove theft, just the absence of those items in the area being photographed. If items were stolen, I find that the tenant has failed to prove, on a balance of probabilities, that the landlord or the landlord's wife stole them. I find the security latch to be a red hearing as both parties agree is could only be latched when the tenant was home and the alleged theft occurred when the tenant was not home, so whether the latch was present or not would not impact the alleged theft.

The tenant's claim for the return of the allegedly stolen items is dismissed without leave to reapply for failure to prove the landlord stole the items or has otherwise retained them. I dismiss the tenant's claim for the replacement cost of the allegedly stolen items because the tenant has not proved that the landlord stole them, and because the tenant has not proved the third test set out in Residential Tenancy Policy Guideline #16, that being proving the value of the damage or loss suffered, as no receipts or estimates were entered into evidence.

Car tire repair costs

The tenant testified that the landlord and or landlord's associates punctured his tires. The agent testified that the landlord and landlord's associates did not puncture the tenant's tires. Based on the photographs entered into evidence and the tire used tire receipts entered into evidence, I accept the tenant's testimony that some of his tires were punctured; however, I find that the tenant has failed to prove that it was the landlord or associates of the landlord who damaged the tires.

The tenant testified that he witnessed his tire punctured on May 2, 2021 when the landlord and associates assaulted him. The agent testified that the above events did not take place. I find that the tenant has not proved, on a balance of probabilities, that the alleged events of May 2, 2021 occurred as no corroborating evidence such as police reports, witness statements, medical records regarding the alleged May 2, 2021 assault etc were entered into evidence. I find that the photographs of a damaged tire do not, on a balance of probabilities, tie the landlord to that tire.

As stated above, 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. I find that the tenant has not proved, on a balance of probabilities, that the landlord or the landlord's associates damaged the tenant's tires.

I also find that the tenant has failed to prove the value of the alleged loss as the tenant did not provide receipts totalling \$1,500.00 for the alleged repairs. I find the tenant's testimony that the repair shop sometimes did not provide a receipt to be uncredible and unlikely.

I find that the tenant has proved that he paid a total of \$406.80 for used tires as evidenced by the receipts entered into evidence; however, I find that the tenant has not proved that the landlord is responsible for those costs. The tenant's claim for the cost of the tire repair is therefore dismissed without leave to reapply.

Filing fee

As the tenant was not successful in this application for dispute resolution, I find that he is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for dispute resolution 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: March 24, 2021

Residential Tenancy Branch