Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT, RPP

Introduction:

On October 08, 2021 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for the return of personal property, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 18, 2021 the Dispute Resolution Package was sent to the Landlord with the initials "RK", via registered mail, at the service address noted on the Application. The Tenant submitted a Canada Post receipt that corroborates this testimony and Canada Post documentation that shows the package was signed for by an individual with the same surname as "RK". The Tenant stated that the service address is the address provided by the Landlord on a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served to the Tenant in 2019.

On the basis of the aforementioned testimony and evidence, I find that the Dispute Resolution Package was served to "RK" in accordance with section 89 of the *Residential Tenancy Act (Act),* however "RK" did not appear at the hearing. As the documents were properly served to "RK", the hearing proceeded in the absence of "RK".

On May 09, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to "RK" at the same service address, via registered mail, on May 09, 2021. The Tenant submitted Canada Post documentation that corroborates this testimony. On the basis of the undisputed testimony and the documentary evidence, I find that this evidence was served to "RK" in

accordance with section 88 of the *Act*, and it was accepted as evidence for these proceedings.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Tenant affirmed that he would not record any portion of these proceedings.

Preliminary Matter #1

The Tenant stated that he did not enter into a tenancy agreement with the Respondent with the initials "BD". At the hearing the Tenant was given the opportunity to remove "BD" as a Respondent in this matter, given that he did not enter into a tenancy agreement with this individual.

At the hearing the Tenant asked that "BD" be removed as a Respondent. I find the Tenant has withdrawn his application for an Order naming "BD". Any Order granted to the Tenant in regard to these proceedings will not name "BD".

I note that if the Tenant had not withdrawn his application for an Order naming "BD", I would have dismissed the application for an Order naming that party, given that they did not enter into a tenancy agreement.

Preliminary Matter #2

At the hearing the Tenant applied to amend the Application for Dispute Resolution to name the second Landlord listed on his tenancy agreement as an additional Respondent in this matter, which is an individual with the initials "AT".

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure permit me to amend an Application for Dispute Resolution at the hearing 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.

As there is no evidence that the second Landlord listed on the tenancy agreement was served with notice of these proceedings, I cannot conclude that the second Landlord could have anticipated this amendment. I therefore dismiss the Tenant's application to amend the Application for Dispute Resolution to name this second Landlord.

On the basis of the tenancy agreement submitted in evidence, I find that the Tenant knew, or should have known, that there was a second Landlord. As such, the Tenant had the opportunity to name that party as a Respondent.

Upon being advised that the Application for Dispute Resolution would not be amended to name the second Landlord, the Tenant was given the opportunity to withdraw the Application for Dispute Resolution and to file a new Application for Dispute Resolution which names both Landlords. The Tenant declined this opportunity and opted to proceed with this Application for Dispute Resolution, with the understanding that "RK" would be the sole Respondent .

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to compensation for lost property?
Is there a need to issue an Order requiring the Landlord to return personal property?

Background and Evidence:

The Tenant stated that:

- The tenancy began on June 01, 2019;
- The rent was $2,300.00 per month;
- The Tenant paid a security deposit of $1,150.00;
- In 2019 the Landlord served him with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- He disputed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- A hearing was convened in October of 2019 to consider the merits of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- At the hearing in October of 2019 a Residential Tenancy Branch Arbitrator set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- He was never served with an Order of Possession requiring him to vacate the rental unit;
- On October 06, 2019 or October 08, 2019, the Landlord changed the lock to the rental unit;
- He was able to gain access to the unit through a window;
- He vacated the rental unit on October 10, 2019;

- He moved some of his property from the rental unit on October 10, 2019;
- When the movers he hired returned to the property for a second load on October 10, 2019, the Landlord would not allow the movers into the rental unit;
- The Landlord would not respond to telephone calls made by the Tenant on October 10, 2019;
- He met with the Landlord on the morning of October 11, 2019, but the Landlord would not let him retrieve the remainder of his property;
- He contacted the police and on October 13, 2019 the police informed him that his property had been left outside the rental unit;
- He went to the rental unit on October 13, 2019 and was able to recover some of his belongings that had been left outside;
- The Landlord moved a two person sauna from the rental unit and left it outside;
- The sauna was damaged so the Tenant left it on site;
- The sauna was approximately 1.5 years old at the end of the tenancy;
- The Landlord moved a recumbent bike from the rental unit and left it outside;
- The bike was damaged so the Tenant left it on site;
- The bike was approximately 5 years old at the end of the tenancy;
- The Landlord moved a home theatre system from the rental unit and left it outside;
- The theatre system was damaged so the Tenant left it on site;
- The Landlord moved a freezer from the rental unit and left it outside;
- The freezer was damaged so the Tenant left it on site;
- The freezer was approximately 2 years old at the end of the tenancy;
- None of the aforementioned items were damaged prior to being moved outside by the Landlord;
- The Landlord moved 5 watches from the rental unit, which the Tenant was unable to locate;
- The watches were between 2 and 10 years old;
- He did not provide the Landlord with a forwarding address prior to filing this Application for Dispute Resolution;
- After the tenancy ended, the Landlord followed him to his new home so he knew where he lived;
- He did not authorize the Landlord to retain any portion of the security deposit;
- The Landlord did not return any portion of the security deposit; and
- The Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant submitted a document in which he provides website links, which he says show his damaged sauna can be purchased, new, for $2,999.99 his damaged home theatre system can be purchased, used, for $1,500.00; his damaged recumbent bike can be purchased, new, for $2,849.00; and his damaged freezer can be purchased, new, for $964.00.

The Tenant is seeking compensation, in the amount of $9,562.99 for his missing/damaged property.

The Tenant is seeking compensation for moving costs, in the amount of $825.00. He stated that he did not submit a receipt for these costs, as it was a “fly by night” company and he paid cash.

Analysis:

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* There is no evidence that the Tenant gave written notice to end the tenancy pursuant to section 45 of the *Act* or that the Landlord gave notice to end tenancy pursuant to sections 47, 48, 49, 49.1, and 50 of the *Act.* Although the Tenant testified that he was served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in 2019, which is notice to end the tenancy pursuant to section 46 of the *Act*, the undisputed evidence is that this Notice was set aside by a Residential Tenancy Branch Arbitrator. I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the undisputed testimony of the Tenant, I find that the Tenant vacated the rental unit on October 10, 2019 and that the tenancy ended on that date, pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. A tenancy agreement frustrated when, without the fault of either party, the

tenancy cannot continue because of an unforeseeable event. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

On the basis of the undisputed testimony of the Tenant, I find that the locks to the rental unit were changed on October 06, 2019 or October 08, 2019. I find that this is a breach of section 31(1) of the *Act*, which prohibits landlords from changing locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. I cannot conclude that this ended the tenancy, however, as the Tenant was able to gain access to the rental unit and to retain possession of it until October 10, 2019.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

Section 39 of the *Act* stipulates that 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, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

On the basis of the undisputed testimony, I find that the Tenant did not provide the Landlord with a forwarding address, in writing, prior to filing this Application for Dispute Resolution on October 08, 2021. As this tenancy ended on October 10, 2019 and the Tenant did not provide the Landlord with a forwarding address, in writing, within one year of the end of the tenancy, I find that the Tenant’s right to the return of the deposit is extinguished and that the Landlord is entitled to retain it, pursuant to section 39 of the *Act*. I therefore dismiss the Tenant’s application for the return of the security deposit.

Section 26(3) of the *Act* stipulates that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property.

On the basis of the undisputed testimony of the Tenant, I find that the Landlord breached section 26(3) of the *Act* when the Landlord prevented the Tenant from moving his property from the unit on October 10, 2019 and October 11, 2019.

On the basis of the testimony of the Tenant, I find that the Landlord interfered with this personal property while the Tenant was in the process of moving it. I therefore cannot conclude that the Landlord had the right to deem this property abandoned and/or to move this property pursuant to section 24(1) of the *Residential Tenancy Regulation*.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Landlord damaged several items when they were moved by the Landlord, including a freezer, a home theatre system, a recumbent bike, and a two-person sauna. I also find that several watches were lost as a result of the Landlord moving the Tenant's personal property.

Section 67 of the *Act* authorizes me to require a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord not complying with this *Act*. On the basis of the undisputed evidence of the Tenant, I find that the Tenant suffered a loss as a result of the Landlord breaching section 26(3) of the *Act* and section 24(1) of the *Residential Tenancy Regulation*.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In addition to establishing that the Tenant suffered a loss, the Tenant has an obligation to accurately establish the amount of the loss. I find that the Tenant has submitted insufficient evidence to establish the cost of replacing his damaged sauna, his damaged recumbent bike, his damaged home theatre system, and his damaged freezer.

Although the Tenant has submitted a document in which he provides website links, which he says show the cost of replacing these items, I am unable to access those links by clicking on them or copying and pasting them. Rather than providing the links, the Tenant should have opened the links and provided the information contained on the website. It is insufficient, in my view, to simply provide the Arbitrator with tools needed

to research the costs, as that goes beyond the role of an independent decision maker.

I find that the Tenant submitted insufficient evidence to establish the cost of replacing the 5 watches which could not be located after they were moved by the Landlord. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that establishes the value of the missing watches.

When receipts or estimates of value are available, or could be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present that documentary evidence.

As the Tenant did not establish the costs of replacing his damage or missing property, I dismiss his claim for replacing the items.

In the absence of evidence that causes me to conclude that the Landlord is still in possession of any of the items mentioned in this Application for Dispute Resolution, I dismiss the Tenant's application for an Order requiring the Landlord to return personal property.

Section 67 of the *Act* permits me to grant compensation to a tenant if the tenant suffers a loss as a result of the Landlord not complying with the *Act*. I find that the moving costs incurred by the Tenant were not sufficiently related to the actions of the Landlord. While I accept that the Landlord incorrectly changed the locks to the rental unit, I find that the Tenant regained possession of the rental unit after the locks were changed and that he did not, therefore, need to move his property from the unit. Rather, a Residential Tenancy Branch Arbitrator had recently concluded that the tenancy would continue and that the Tenant did not need to vacate the rental unit.

This does not mean to imply that the actions of the Landlord should be condoned. Had the Tenant remained in the rental unit and sought compensation for loss of quiet enjoyment as a result of the Landlord changing the locks, I find it highly likely he would have been successful. I cannot conclude, however that the Tenant is entitled to moving costs, as he did not need to move. I therefore dismiss the claim for moving costs.

Although I have not awarded the Tenant compensation for reasons outlined in this decision, I find that the Tenant's Application for Dispute Resolution has merit. I therefore find that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary of $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 27, 2022

Residential Tenancy Branch