Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC PSF FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $483.92 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlords to comply with the Act, regulation or tenancy agreement, for an order directing the landlords to provide service or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The hearing began on May 2, 2022. The tenants, the landlords and an agent for the landlords, FA (agent) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. After 65 minutes, the hearing was adjourned to allow additional time for the parties to present all of their evidence. On September 9, 2022, the hearing continued and after an additional 54 minutes, the hearing concluded. A summary of the evidence is provided below and includes only that which is relevant to the claim(s) before me.

The only service issue was in relation to the audio recording, which was excluded due to the tenants indicating that they were not served with an audio recording. Other than the audio recording being excluded, there were no other service issues.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Have the tenants provided sufficient evidence to support that they are entitled to money owed for compensation for damage or loss under the Act?
- If yes, are the tenants entitled to any other orders under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 9, 2021 and was scheduled to convert to a month-to-month tenancy after January 1, 2023. The parties confirmed that since the first hearing, the parties signed a Mutual Agreement to End Tenancy as of June 30, 2022. As a result, the tenancy ended June 30, 2022 by mutual agreement. During the tenancy monthly rent was $2,000 and was due on the first day of each month.

The tenants have claimed $383.92 comprised as follows:

ITEM NUMBER AND DESCRIPTION	AMOUNT
1. Registered mail costs (dispute package)	$36.82
2. Registered mail costs (evidence package)	$14.90
3. Storage locker (not provided by landlord as per tenancy agreement) estimate from Protec Storage (5x5 for $92 or 5x10 for $130) Building storage 5x7 so $100 requested as follows: 1. January $100 2. February $100 3. March 1-10 $32.20 or $3.22 per day.	$232.20
4. Filing fee	$100
TOTAL	**$383.92**

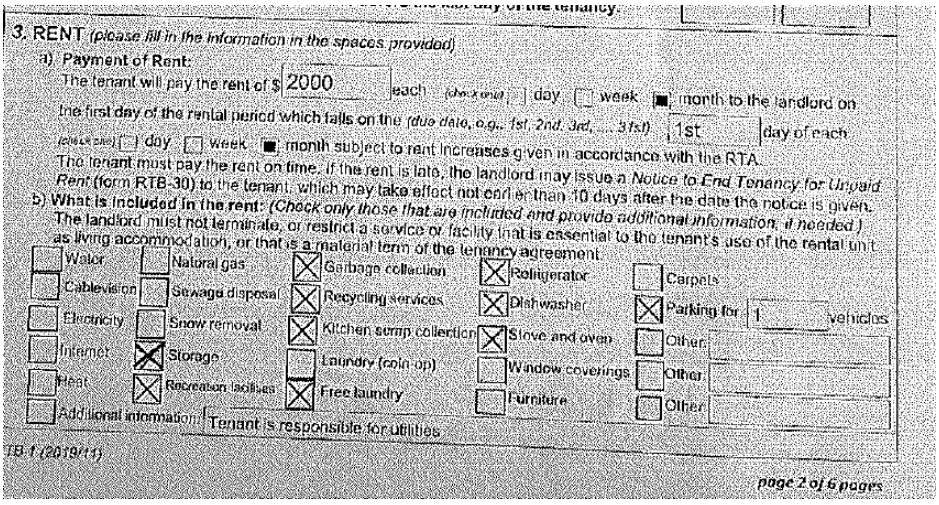
Although the tenants referred to an amendment in their application, I find the amount claimed, $383.92 remained the same in all of the Monetary Order Worksheets submitted in evidence.

Regarding items 1 and 2, the tenants have claimed $36.82 and $14.90 for the costs of registered mail related to serving the dispute package and evidence package on the landlords. My abilities to award compensation are restricted by Section 67 of the Act which are described above and limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the tenants the return of registered mail fees. As a result, items 1 and 2 are dismissed, without leave to reapply as there is no such remedy under the Act.

Regarding item 3, the tenants are seeking compensation comprised of $232.20. The tenants testified that they reached the amount of $232.20 as follows:

> Protec Storage quote for 5x5 storage unit is $92
> Protect Storage quote for 5x10 storage unit is $130
> Building storage as indicated from landlord in emails but not provided at start of tenancy is 5x7
>
> ---
>
> January 2022 cost of storage $100
> February 2022 cost of storage $100
> March 1-10, 2022 cost of storage $32.20 (10 days at $3.22 per day)
>
> ---
>
> TOTAL = $232.20

In support of their claim, the tenant referred to the signed tenancy agreement which indicates as follows:



3. RENT *(please fill in the information in the spaces provided)*

a) Payment of Rent:

The tenant will pay the rent of $ 2000 each *(check one)* ☐ day ☐ week ■ month to the landlord on the first day of the rental period which falls on the *(due date, e.g., 1st, 2nd, 3rd, ... 31st)* 1st day of each *(check one)* ☐ day ☐ week ■ month subject to rent increases given in accordance with the RTA.

The tenant must pay the rent on time. If the rent is late, the landlord may issue a *Notice to End Tenancy for Unpaid Rent* (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) What is included in the rent: *(Check only those that are included and provide additional information, if needed.)*

The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

☐ Water	☐ Natural gas	☒ Garbage collection	☒ Refrigerator	☐ Carpets
☐ Cablevision	☐ Sewage disposal	☒ Recycling services	☒ Dishwasher	☒ Parking for 1 vehicles
☐ Electricity	☐ Snow removal	☒ Kitchen scrap collection	☒ Stove and oven	☐ Other:
☐ Internet	☒ Storage	☐ Laundry (coin-op)	☐ Window coverings	☐ Other:
☐ Heat	☒ Recreation facilities	☒ Free laundry	☐ Furniture	☐ Other:
☐ Additional information: Tenant is responsible for utilities				

RTB-1 (2019/11)

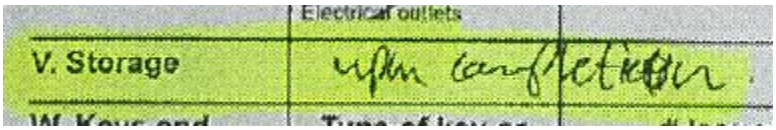
page 2 of 6 pages

In addition, the tenants referred to the tenancy agreement Addendum (Addendum) which indicates the following:

- Tenant will obtain 1 key to storage

The tenants also referred to a screenshot from a smartphone showing two quotes from Protec Storage as indicated above on page 3, where a 5x5 unit is $92 per month and a 5x10 unit is $130 per month.

The landlord testified that on the incoming Condition Inspection Report (CIR) on page 4 of 7 the landlord wrote as follows:



The parties were advised during the hearing that a CIR does not outweigh or replace a signed tenancy agreement.

The landlord testified that they did not initially realize that their purchase of the rental unit did not include a storage locker. As a result, the landlord communicated with their realtor, property manager and developer contacts to arrange to purchase a storage locker.

The parties agreed during the hearing that once the storage was completed, the tenants were finally given access to the storage unit as of March 8, 2022. That date was confirmed by the parties during the hearing. During the hearing the parties agreed that the storage locker purchased by the landlord was actually 4x6 (four feet by six feet). The tenancy agreement does not specify the size of the storage locker.

There is no dispute that earlier in the tenancy, the landlord used a property manager, DL (property manager) who communicated regarding the storage locker. In an email dated February 24, 2022 at 2:30 p.m., DL advised landlord ZB that they were quitting their contract as follows:

> Your tenant just spat on my car after yelling and arguing with me and my staff.
>
> I am quitting our contract. I cannot have these people anywhere near me or my office.
>
> I will forward all the evidence and paperwork that I have to you. I will also send you a detailed report of what happened today to add to your evidence package to show their unreasonable behavior.
>
> Regards,

[reproduced as written]

The tenants affirmed that they did not spend money on storage and are relying on the quotes only for compensation.

Although both parties spent much time presenting evidence and responding to the evidence of the other party, I find that the evidence is not relevant to my analysis below so decline to include a summary of all the testimony and documentary evidence presented as it does not change the fact that the tenants **did not pay for storage, and therefore did not suffer a financial loss.**

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

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

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence **that can verify the value of the loss or damage.**

Finally, it must be proven that the tenants **did what was reasonable to minimize the damage or losses that were incurred.**

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In addition, section 7 of the Act applies and states:

> 7(2) **A** landlord or **tenant who claims compensation for damage or loss** that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**
>
> [emphasis added]

Given parts 3 and 4 of the test for damages or loss described above and pursuant to section 7(2) of the Act, I find the tenant failed to do what was reasonable to minimize the loss as they are claiming for storage that they did not actually pay for out of pocket themselves. As a result, I find the tenants suffered no financial loss.

I agree with the tenants; however, that the landlord did breach the tenancy agreement between December 9, 2021 and March 7, 2022 by failing to provide a storage locker as indicated on the tenancy agreement as included in the monthly rent. When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. As noted above, proving a claim for damage or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took reasonable measures to mitigate their loss.

Residential Tenancy Branch (RTB) Policy Guideline 16, Compensation for Damage or Loss (Policy Guideline 16) states the following, in part:

> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.
>
> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “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.

Given the above and to acknowledge the breach of the tenancy agreement by the landlord in failing to provide a storage locker between December 9, 2021 and March 7, 2022, I award the tenants a nominal amount of **$100** to reflect that the tenants suffered a breach of the Act by the landlords. I dismiss any higher amount claimed due to insufficient evidence, without leave to reapply.

As noted above, I find that the CIR does not outweigh the tenancy agreement and as a result, I afford little weight to the fact that the landlord wrote “upon completion” related to the storage locker on the CIR as that should have been noted on the tenancy agreement and initialled by both parties to ensure both parties understood that issue. The landlords failed to do either on the tenancy agreement before me.

As the tenants’ application was partially successful, I grant the tenants **$100** pursuant to section 72 of the Act for the recovery of the cost of the filing fee.

Based on the above, I find the tenants have established a total monetary claim of **$200.** As the tenancy has ended prior to this Decision being written, I grant the tenants a monetary order in the amount of **$200** pursuant to sections 67 and 72 of the Act.

Conclusion

The tenants’ application is partially successful.

The landlord did breach the tenancy agreement as noted above.

As a result, the tenants have been granted a total monetary order in the amount of $200. Should the tenants require enforcement of the monetary order, the monetary order must first be served on the landlord with a demand letter. If the landlords fail to pay the tenants, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 16, 2022

Residential Tenancy Branch