



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP, MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the tenant’s personal property pursuant to section 65;

The tenant attended with the witnesses DB and MG who provided affirmed testimony. The agents AS and AS attended for the landlord (“the landlord”).

This is a continuation of a hearing which began on June 7, 2022. The hearing was scheduled for 1-hour and was adjourned after 113 minutes to allow the parties time to complete their submissions.

The terms of the adjournment are set out in my Decision of June 7, 2022.

No issues were raised with respect to service, and I find each party served the other in compliance with the Act.

The parties confirmed they were not recording the hearing.

The parties provided the email addresses to which the Decision shall be sent.

The hearing resumed and the parties completed their submissions in 60 minutes.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The parties provided considerable documentary evidence and conflicting testimony. Not all this evidence is referenced in my Decision. I refer to only key, relevant and admissible findings and facts upon which I based my Decision.

Tenant's Claims

The tenant testified as follows.

The tenant rented a unit from the landlord from November 1, 2019, to March 21, 2020. The unit is a room in a house in which there are several other rented rooms, all of which share some areas, such as a kitchen and bathrooms. Rent was \$950.00 monthly payable on the first. The agreement was for a 6-month term. The tenant paid a security deposit of \$450.00. A copy of the tenancy agreement was submitted.

The tenancy was tense with frequent conflict between the parties and other occupants. During the brief tenancy, the tenant complained many times to the landlord about needed repairs and other circumstances. The tenant submitted

copies of letters to the landlord outlining his many complaints. The tenant believed the landlord was taking advantage of him and others.

In his written submissions, the tenant claimed he was harassed and threatened by the landlord. The other occupants assaulted him. His peace was disturbed. He wrote, "The landlord did nothing to stop them, reprimand them or provide a safe space for me and my guests." The tenant submitted:

I was harassed, abused and neglected by [the landlord]. They stole my money, overcharged me for my suite, restricted access to washroom and shared spaces, illegally evicted and ripped me off in multiple ways.

They had an illegal suite in the house, I asked to be compensated for loss of space, and was thrown out and told never to return and could not collect my belongings.

My mental health and health in general suffered greatly. I ended up homeless and bouncing form temporary homes.

The tenant did not submit any supporting documents in support of these claims.

On March 21, 2020, the tenant said he underwent a severe mental health episode caused by the landlord's actions. No medical reports were submitted in support of this assertion.

The tenant was immediately hospitalized. He never returned to the unit. The landlord subsequently did not allow him to return to collect his belongings.

The tenant's father and friend MG, both witnesses, attended at the unit on March 24, 2022 to collect the tenant's belongings and to clean the unit. The tenant claimed they were given inadequate time for these tasks, the landlord provided no assistance, and many personal possessions were left behind.

The witness DB, the tenant's father, testified as follows. When he went to the building to gain access to the unit, he described the landlord as "playing hardball" and the landlord "strong armed" him. The landlord told him he had to sign the Mutual Agreement to End Tenancy as a precondition of being allowed into the unit. DB signed the agreement, a copy of which was submitted as evidence. The Mutual Agreement included a clause that the security deposit would not be refunded, and the tenant would vacate the unit effective March 31, 2020.

After being allowed into the tenant's unit, DB stated he had 3 or 4 hours to clean the unit and collect the tenant's possessions. DB stated he searched for the tenant's belongings in the building's storage areas but believed he could not locate everything. DB confirmed the tenant owned the items described but he is unable to confirm where they were.

The witness MG testified as follows. She attended at the unit to help DB clean and collect the tenant's possessions as he was in the hospital. MG testified that she asked the landlord or agent if she could call the tenant in the hospital for instructions but was refused. MG and DB informed the tenant he could not come back to the unit.

The tenant testified he obtained a 1-day leave from the hospital to collect his belongings before the end of March 2020. However, he believed he was not permitted back into the unit by the landlord based on the information he received from DB and MG. The tenant did not go to the unit again. To get access to the unit and his possessions, the tenant brought an application against the landlord, the file number for which is referenced on the first page.

The previous application was brought on March 26, 2020. The tenant applied for an Order of Possession. However, the tenant had found new housing by the date of the hearing on April 4, 2020 and withdrew his application which is stated in the Decision. Reference to the file number appears on the first page. No finding was made about his personal possessions.

The tenant now believes the return of any possessions is unlikely because of the passage of time. Some of the items had deep personal significance. The tenant requested the following in a written submission, as written:

Below are my totals and reasons for requesting such reimbursement. Considering I was baited and switched from \$850 as advertised to \$950 for the room. I request $\$100/\text{month} \times 5 \text{ months} = \500 rebate for being tricked into paying more than advertised.

The downstairs shared washroom was locked and restricted for 2 months. $\$100/\text{month} \times 5 \text{ months} = \500 for losing access to this space after moving in.

Shared dining room converted into illegal suite taking away the much needed shared space. I want $\$100/\text{month}$ for 5 months = \$500 for that space restriction and forcing more people into an already over crowded space.

I request $\$50/\text{month} \times 3 \text{ months} = \150 for the lost time the washing machine was left broken. I request $\$100/\text{month}$ for 5 months = \$500 where almost all repairs were left undone, resulting in injury and being locked out of the house.

I request $\$100/\text{month} \times 1 \text{ month} = \100 for the last month I was no longer allowed to use my private ensuite washroom attached directly to my room.

I request a prorated amount for rent paid when I was unable to access or return to my suite and the suite remained open 26 days unused space I was paying for.

$\$950/31 \text{ days in march} = \$30.65 \text{ per day} \times 26 \text{ days of no use starting march 5} = \text{I request } \$796.77 \text{ rebate for loss of access to my room and personal possessions.}$

I request \$450 for snowboard boots

I request \$250 for snowboard goggles I request \$100 for snowboard gloves I request \$100 for snowboard helmet

folding tables x 4 = \$100 each = I request \$400 total

heavy duty 10x10 gazebos x 3 x\$300 each = I request \$900 total vitamins and supplement collection = I request \$500

food in deepfreeze and refrigerator and canned goods = I request \$500

antique guitar gift from 1994 = I request \$2600 is actually below my perceived value and what this item is worth to me - for this item as it has been with me since childhood and was one of the only gifts ever from my mother.

I am requesting to be reimbursed for \$45.42 registered mail for evidence on March 27 I am requesting to be reimbursed for \$40 printing costs at library march 27

I am requesting to be reimbursed for \$23.20 Registered mail for request for damage deposit to be returned -

proof of service evidence has been submitted Moving truck from uhaul \$120

Storage space from national storage \$400

inadequate or no heating for \$100/month for 5 months = \$500

considering there was no move in inspection was ever done and [landlord]

confirmed there was no damage to the suite, I want my \$475 returned x2 for being late = \$950

Here are the numbers compiled for a total:
[...itemized, total]

\$10,925.39 is what I am requesting to be awarded in compensation for items lost/not returned under duress.

The tenant did not submit receipts for the purchase or replacement for the items except for a grocery purchase.

Landlord's Response

The landlord acknowledged the existence of the tenancy agreement and the attendance at the unit by the tenant's father and friend MG as testified. They acknowledged a discussion which resulted in the signed Mutual Agreement to End Tenancy in which the tenancy would end on March 31, 2020 and the security deposit was forfeited.

However, the landlord testified as follows. They denied the remainder of the tenant's claims. The tenant was a difficult person who disturbed other occupants of the building; there were many complaints about the tenant. Copies of the complaint letters were submitted. The landlord submitted video files of the events of March 21, 2020 and described the tenant's condition as follows:

[Tenant] being naked in the front yard. Public indecency with mental breakdown in front of families and kids walking to school in the morning.

The landlord denied there was any justification for the tenant's multiple complaints. The landlord claimed they cooperated with the tenant's family and friend MG to allow them access to the unit. They allowed them adequate time to clean and collect the possessions.

The landlord denied pressuring anyone to sign the Mutual Agreement to End Tenancy. While they are now uncertain if the tenant owed any rent, they stated they wanted the tenancy ended and all issues resolved. As the tenant was in the hospital without a release date, they obtained an agreement ending the tenancy and forfeiting the deposit. The reason for the forfeiture of the deposit was unclear.

The landlord submitted texts between them and the tenant's family which supported their claim that adequate time was given on March 24, 2020 to collect the tenant's possessions.

The landlord denied disallowing the tenant from attending at the unit to collect his possessions before the end of March 2020. They acknowledged the tenant brought an application before the end of the month to get back into the unit. The landlord denied they were asked to allow the tenant in to retrieve his belongings. They denied the belongings were left in the building as claimed. They did not provide an explanation for failing to allow the tenant access.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here in a hearing which lasted 3 hours. The relevant and important aspects of the claims and my findings are set out below.

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a

balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] 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.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state 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.

It is up to the tenant to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

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.

Credibility

I acknowledge that the landlord disagreed with the tenant's version of events in key aspects. 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.

Given the conflicting testimony, I have considered credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I acknowledge the landlord does not agree with the tenant's interpretation of the events. With respect to the unsupported claims of the tenant about the living conditions in the unit and building, I find the landlord is credible. I give the landlord's testimony considerable weight with respect to that aspect of the tenant's claim.

The tenant's evidence was supported regarding some aspects of his claim by the two witnesses. Where so supported, I find the tenant's evidence believable and persuasive. I find his testimony in many respects is in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances".

In considering the evidence and the above test, I find the tenant credible when he stated he was not allowed back into the unit and that items were left behind by DB. I find this belief to be reasonable in view of the circumstances I find the landlord intended that the tenant would not return, and the matter was over and done with after March 24, 2020. I find it believable and understandable that DB did not know where all the tenant's items were in the building, and therefore did not retrieve everything owned by the tenant.

I accept the testimony of both witnesses that they understood the tenant was not allowed back into the unit and they so informed the tenant. I find the tenant believable when he testified that he understood he was not permitted back into the unit after March 24, 2020 and that he obtained a 1-day pass from the hospital in an unsuccessful effort to do so. I acknowledge that he brought an application to the RTB on March 26, 2020 to gain access to the unit. I find the landlord's testimony they did not know the tenant wanted to get back into the unit to collect

his possessions to be disingenuous and unlikely. I give their assertions in this regard no weight.

I find the landlord's suggestion that the tenant and witnesses are untruthful or exaggerating to be unlikely concerning the tenant's access to the unit and retrieval of his possessions. I find the landlord attempted to end the tenancy on the date the two witnesses attended at the unit and to bring the matter to an end.

Findings

I accept the tenant was critical and unhappy with the conditions of the tenancy and the signing of the Mutual Agreement to End Tenancy. However, I find the tenant has failed to meet the onus of proof that the landlord failed to comply with the Act or the agreement. with respect to all claims which are dismissed without leave to reapply, except those specifically described below.

I find the tenant has met the onus of proof with respect to the following claims:

1. The landlord did not allow the tenant to return to the unit from the date of signing the Mutual Agreement to End Tenancy (March 24, 2020) to the tenancy end date, March 31, 2020.
2. As a result of not being allowed to return to the unit, the tenant was unable to collect all his possessions and his incurred a loss.

Each is addressed.

Return to Unit

Applying the 4-part test to the landlord's disallowing the tenant from returning to the unit, I find the landlord has failed to comply with the Act and disallowed the tenant to return to the unit from March 24, 2020 to March 31, 2020.

Secondly, I find the tenant incurred loss because of the landlord's unlawful refusal to allow the tenant to collect his belongings.

Thirdly, I find monthly rent was \$950.00. I find the tenant was denied access to the unit for 7 days which I find was a loss of rent in the prorated amount of \$215.00.

Fourthly, I find the tenant made all reasonable efforts to gain access to the unit.

Accordingly, I award the tenant \$215.00 under this heading.

Tenant's Possessions in Unit

Applying the 4-part test to the loss of the tenant's possessions because of inability to access the unit, I find the tenant has incurred losses for which the landlord is responsible.

Firstly, I find the landlord unlawfully prevented the tenant from returning to the unit.

Secondly, I find the landlord caused the tenant loss or damage from failing to allow the tenant to return to collect his belongings.

The third part of the test is whether the tenant has established the value of the damage or loss. I find the tenant has not done so. The photographs submitted by the tenant support the tenant's claims that he owned the objects identified. There is no evidence of the value of the items or the cost to the tenant to replace them.

Policy Guideline # 16 – Compensation for Damage or Loss states:

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

In reviewing the tenant's list of possessions for which he claimed compensation, I find the valuations are reasonable. He listed the missing items and value as follows:

ITEM	AMOUNT
Snowboard boots	\$450.00
Snowboard goggles	\$250.00
Folding tables x 4 = \$100 each	\$400.00
Snowboard gloves, snowboard helmet	\$200.00
Heavy Duty 10x10 Gazebos X 3 X\$300 Each	\$900.00
Vitamins and supplement collection	\$900.00
Canned goods, food	\$500.00
Antique guitar	\$2,600.00
TOTAL	\$6,200.00

I find the tenant did everything he could to minimize his losses and to obtain the return of his belongings. I also acknowledge that some of the missing items claimed by the tenant had deep personal significance. However, I am unable to determine the value of those items with any certainty.

Considering all evidence, I find this situation calls for nominal damages.

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

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.

I find this is an appropriate situation for the award of a nominal amount.

Considering the above, the testimony, the evidence and the Policy Guideline, I therefore award the tenant half of the value of the above, being the amount of \$3,100.00 under this heading.

Filing fee

As the tenant has been successful in this matter, I award the tenant reimbursement of the filing fee of \$100. 00.

In summary, I grant the tenant a Monetary Order in the amount of **\$3,415.00** as follows:

ITEM	AMOUNT
Rent	\$215.00
Nominal damages	\$3,100.00
Filing fee	\$100.00
TOTAL	\$3,415.00

The tenant’s application for the return of personal property is dismissed without leave to reapply.

Conclusion

I grant a Monetary Order to the tenant in the amount of **\$3,415.00**. This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

The tenant's application for the return of personal property 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: October 04, 2022

Residential Tenancy Branch