



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT
Landlord: MNDCL, FFL

Introduction

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- a monetary order for compensation for loss or money owed pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch’s teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure

about behaviour including Rule 6.10 about interruptions and inappropriate behaviour
Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence packages. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other's the Applications and evidentiary materials.

Issue(s) to be Decided

Are both parties entitled to the monetary orders applied for?

Are both parties entitled to recover the filing fees for their applications?

Is the tenant entitled to return of their security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on or about June 30, 2016, and ended on or around June 11, 2021 when the tenant was transferred to the hospital. On June 14, 2021, it was confirmed that the tenant would not be returning to the rental unit. Monthly rent was set at \$1,350.00, payable on the first of the month. The landlord still holds the tenant's security deposit of \$600.00 for this tenancy.

Both parties confirmed that meetings took place virtually over video conference call which involved the tenant's social worker and sister, and the landlord was instructed to move and store the tenant's belongings.

The tenant testified that they did agree for the landlord to move their belongings, but discovered that many of their items were missing, including valuable tools. The tenant testified that they first noticed the missing items in photos, and later confirmed that this was the case when they went to physically inspect the storage locker. The tenant made a list of the missing items, a submitted in their application. The tenant testified that the inspection took place about six weeks later, and had expected that everything would be moved and stored with the exception of a couch and table. The tenant testified that they never recovered or found these items, which included large items like the router table. The tenant testified that there was no possible way for these items to just disappear. The tenant is seeking a monetary order for the replacement value of the missing items.

The tenant is also seeking monetary orders for money owed, including utilities, labour costs, and the return of their security deposit. The tenant's claims are set out below, as reproduced from their evidentiary materials.

The tenant testified that both parties had agreed to share utilities, which the landlord would reimburse the tenant a portion of. The tenant testified that they did agree to volunteer to repair the fence, but the work took three days instead of one day. The tenant testified that the agreement was a verbal one. The landlord confirmed that they are not disputing the claims for repair expenses in the amount of \$367.20 and the BC Hydro bill in the amount of \$107.92. The landlord also agreed to the return of the security deposit. I informed both parties that the security deposit would be dealt with in accordance with the *Act*.

Current replacement cost of "Missing Items"		\$13,111.32	Includes trees. Does not include Additional missing items. Wood clamp from Lee Valley was found with the large Jointer. This is reflected in a reduction of \$25.20
Additional missing items			
Mortiser was not delivered to locker	Receipt and shipping documents attached	\$1377.72	
Repair Expenses	Copies of invoices attached	\$367.20	Trees and other items have been moved to "Missing Items" (deduction of \$196.05)
Repair Labour and fence constitution – note Labour portion for fence had not been negotiated – M Noble is now billing at market rates. All other labour charges have been adjusted to market rates	Details in Excel	\$2534.50	Market rate of \$65/per hour has been applied, consistent with rate paid at the time by outside parties. 9 hours labour for fence has been added. This is very conservative, as the fence took 3 full days to construct. In addition, no planning or coordination time has been charged.
Shared Utilities @	Details in Excel		

15%			
BC Hydro		\$107.92	
Telus		\$117.60	
Rent / damage deposit		\$650.00	
Monetary Order Requested by Tenant		\$18,266.26	

The landlord filed their own application to recover the cost of moving and storing the tenant's belongings, as well as garbage removal associated with the end of the tenancy.

Item	Amount
Gibson Building Supply	\$120.75
Packing bins x 14	349.30
Garbage removal	270.00
Woodworking Machine storage	150.00
Cleaning of suite	823.33
Moving to storage	360.00
Gas for move and related tasks	96.13
Storage Unit-July	325.50
Filing Fee	100.00
Total Monetary Order Requested by Landlord	\$2,595.01

The landlord testified that they had, in good faith, undertook the large task of moving and storing the tenant's belongings after being instructed to do so. The landlord testified that they were informed that the tenant would not be returning, and were given instructions and permission to pack and store the tenant's possessions. The landlord submitted an email dated June 21, 2021 which confirmed the instructions gathered from the virtual call. The landlord testified that the move delayed the landlord's own plans to

fly home, and the task was not the landlord's choice to do. The landlord submitted a detailed list of expenses that they expected they would be reimbursed for, as well as receipts. The landlord denies having any knowledge of any missing items until the tenant had informed the landlord in October 2021. The landlord testified that they had moved and stored the items as instructed.

The landlord notes that the email correspondence between the parties included the tenant's confirmation that they were not charging for labour for the fence. The landlord submitted an email dated April 25, 2020 from the tenant which stated "I only expect to be paid for my out of pocket costs. I will do all the labour, but will not set the posts. That needs to be done by the contractor".

The landlord also disputes any agreement to share the Telus, and notes that the tenancy agreement only references a 15% rebate for gas and hydro. The landlord testified that they had offered to cover some of the Telus bill in the past, but the tenant always said "don't worry about it". A copy of the tenancy agreement was submitted in evidence.

When questioned in the hearing, the landlord testified that the move took several hours using a borrowed trailer attached to their own car. The landlord testified that the move required at least five people, whom the landlord supervised. The landlord confirmed that they did observe many tools, and noted that large equipment like the router table were taken apart, and moved in pieces.

The landlord testified that they only disposed of the wood, two sofas, and tables, and some kindling left behind at the house.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their applications.

In consideration of the evidence and testimony before me, I am satisfied that at the end of this tenancy, the landlord was instructed to move the tenant's belongings to storage. I

find that the evidence clearly shows that the task was not an easy or small task, and the landlord had undertaken the task despite the fact that it was a burdensome one. I find that the landlord had attempted to undertake this huge task to the best of their ability, which the landlord bore the upfront cost for at the time. The landlord spent a significant amount of time and resources to perform the move, which the landlord felt was done in the most efficient manner while adhering to the instructions given through the virtual call with the parties whom the landlord believed had the designated authority to manage the tenant's affairs. It is undisputed that the tenant was transported to the hospital as they were ill, and would not be returning.

While I believe that the tenant did lose many of their valuable tools and possessions at sometime, and although I am extremely sympathetic about these losses, the burden of proof, as noted above, falls on the applicant to demonstrate that the loss stemmed from the other party's contravention of the *Act* or agreement. In this case, although I agree that items don't tend to "disappear", I am not satisfied that the evidence supports that the landlord, or someone recruited by the landlord, was responsible for the disappearance of these items. Suspicion is not sufficient to support a claim, and unfortunately in this case, I find the tenant's application and evidence falls short. I therefore dismiss the tenant's claims related to the missing items without leave to reapply.

As the landlord did not dispute the tenant's claims for the hydro bill and repair expenses in the amounts of \$107.92 and \$367.20, I allow these portions of the tenant's application.

With respect to the tenant's claim for labour costs for the fence, I find that the email submitted in evidence by the landlord clearly shows that the tenant agreed to perform the labour, and that the tenant clearly stated that they "only expect to be paid for my out of pocket costs". I am not satisfied that any agreement was made between the parties for the tenant to be reimbursed for additional costs, including labour costs. I therefore dismiss this portion of the claim without leave to reapply.

The tenant also applied to recover 15% of the Telus bill. Although the tenant referenced a verbal agreement, I note that the tenant did not submit sufficient evidence to support any history of previous reimbursements that would support the existence of this verbal agreement. Rather, the written tenancy agreement only referenced reimbursement for 15% of the gas and hydro bill. I am not satisfied that the tenant had provided sufficient evidence to support the existence of this agreement, and therefore I dismiss this portion of the tenant's claims without leave to reapply.

As noted above, I find that the landlord was instructed to move the tenant's belongings at the end of this tenancy to storage. I find that the landlord fulfilled their obligations as directed, and bore the costs of doing so. I find that the landlord submitted detailed evidence to support the losses claimed in their application, and the landlord is entitled to reimbursement for the costs associated with the storage, move, and the cleaning at the end of this tenancy. I order that the tenant reimburse the landlord for the expenses listed in the landlord's application.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As both applications contained some merit, and as both parties obtained offsetting monetary awards for recovery of the filing fee, no order will be made in regards to the recovery of their filing fees.

In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's security deposit in partial satisfaction of the monetary awards granted.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,419.89 as set out in the table below:

Item	Amount
Monetary Order to Landlord for Costs associated with moving, storage, and cleaning	\$2,495.01
Repair Expenses	-367.20
Hydro Bill	-107.92
Less security deposit held	-600.00
Total Monetary Order to Landlord	\$1,419.89

The landlord is provided with a monetary order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the monetary claims are 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: December 29, 2022

Residential Tenancy Branch