



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, RPP, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67;
- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51;
- An order for the return of personal property pursuant to section 65; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented by counsel, HF (the "landlord") and the tenant's daughter, TF. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

The landlord testified that they were not served with the tenant's application for dispute resolution by the tenant but received it from the Residential Tenancy Branch. The tenant's evidence was received by the landlord on December 1st which is at least 14 days before this hearing. The tenant acknowledges receiving the landlord's evidence on December 14th and notes that he got it late. The tenant argues that the text messages are not legible in his copy of the landlord's evidence. The landlord testified that the printed copy of evidence sent to the tenant is identical to the one the landlord is using and both she and the landlord's daughter can read it without difficulty. A digital copy was also sent to the tenant. I advised the tenant that if the landlord referred to any

documentary evidence that he could not read, that the tenant was to notify me of such. During the hearing, the tenant did not note any illegible texts.

Preliminary Issue

At the commencement of the hearing, the tenant advised that he seeks total compensation of \$35,000.00, not a split claim of \$10,000.00 and \$25,000.00. The description of the claim is as follows:

Description:

The landlord chose to lock myself and my wife out of our home knowing we were at the hospital and were not at the home. The landlord against advise from myself and my lawyer choose to harass me at my place of work in an attempt to intimidate me. The landlord also removed my belongings and placed them in an unsecured garage. Many of our personnel belongings were damaged or missing. I am asking for compensation for missing and damaged items, pain and suffering and punitive damages.

The tenant also seeks a return of the following items:

Description:

1818 gold Spanish coin, home made shoe rack, Silver bracelet, all paperwork in file box.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Should the landlord be required to return the tenant's personal property?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The tenancy began around 2018 with rent set at \$3,000.00 per month payable on the first day of each month. On July 31, 2020, he was locked out of the rental unit, effectively ending the tenancy.

At this time, his wife was suffering from cancer and while at the hospital, the landlord informed the tenant that the locks were changed. The landlord sent another text to the tenant advising that he was going to the tenant's employer which the landlord did, causing his reputation at the company to suffer. When the tenant went to see his belongings removed from the house, he noted the landlord put them in a dirty, oil stained, unsecured garage. His expensive furniture was left out to be destroyed with no regard for it. Clothes were missing, photo albums destroyed by rodents, and personal paperwork went missing. His wife's bracelet and a Spanish doubloon were also gone when the tenant went to check on his items.

When I asked the tenant how he arrived at \$35,000.00 for his claim, the tenant stated that he could not put a value on the items lost. He is "going after pain and suffering and punitives".

In cross exam, the tenant agreed he signed a mutual agreement to end the tenancy and gave it to the landlord's counsel on November 27, 2020. The tenant acknowledged that both he and his wife each signed documents called "release of property" which states,

"effective November 27, 2020, I [tenant] affirm that all property left by me on the property [address] on November 27., 2020 after 4 p.m. is abandoned by me. The property becomes the property of our landlord, [landlord's name] and he may do with it as he wishes. I release all my rights to that property as of that date and time."

The tenant acknowledges that on November 27, 2020, he accepted a cheque from the landlord's counsel to be reimbursed for the following expenses:

Legal fees	\$1500.00
Refrigerated medication left in fridge	\$700.00
Registered mail and stationary	\$50.00
Food left in fridge	\$200.00
Filing fees	\$240.00

Steno chair refinishing	\$300.00
Total.....	\$2990.00

The tenant submits that the landlords acted callously in disposing of his possessions. They acted with malice with a disregard for decency. The tenant alleges that in his recollection of an interaction with the landlord's lawyer, he was told he's "out of luck" if he can't prove he possessed the items lost.

The landlord's counsel gave the following submissions and testimony since counsel was involved in interactions with the tenant, directly. The tenant sent texts to the landlord in July, 2020, indicating he would vacate the rental unit on July 31, 2020. The tenant hadn't paid rent since June 2020 and went to the Residential Tenancy Branch and obtained an Order of Possession from an arbitrator at an expedited hearing on September 1, 2020. The arbitrator ruled in favour of the tenant and the file number is recorded on the cover page of this decision. Following the Order of Possession granted to the tenant, the landlord was willing to reinstate the tenancy and have the tenant move back in, however the tenant would not pay the back rent between July and September. A mutual agreement to end the tenancy was signed on November 27, 2020, as was the "release of property" form signed by the tenant and his wife.

The landlord took photos of the rental unit on July 31, 2020, showing the rental unit mostly empty of the tenant's possessions. In text messages between the parties, the tenant advises he will be leaving between the 15th and 31st of July. On July 21, the tenant agreed to vacate the unit on July 31, but leave the lower level furniture that the landlord then stored in the garage. Counsel submits that the tenant never made any effort to retrieve any of their possessions left at the rental home until she initiated contact with the tenant.

The landlord argues that she never told the tenant he's out of luck because he couldn't provide an inventory of the possessions left behind. She points to her letter dated November 15, 2020 where she asks the tenant to identify and prove the items he believes are missing.

Analysis

Section 7 of the Act states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

(the 4 point test)

The tenant seeks a monetary order to be compensated for the items left behind at the rental unit as of November 27, 2020. On that date, the tenant and his wife signed a mutual agreement to end the tenancy and a “release of property” form. To reiterate that form, it states,

“effective November 27, 2020, I [tenant] affirm that all property left by me on the property [address] on November 27., 2020 after 4 p.m. is abandoned by me. The property becomes the property of our landlord, [landlord’s name] and he may do with it as he wishes. I release all my rights to that property as of that date and time.”

The parties also agree that on November 27th, the landlord compensated the tenant with a cheque for \$2,990.00 for expenses.

I find that when the tenant signed the two forms, the tenant has waived any right to seek compensation for the possessions left behind. The basic components of contract law were satisfied: offer, acceptance, consideration and capacity. The landlord offered

compensation of \$2,990.00, it was accepted by the tenant, each party derived benefit from the agreement and both parties had the legal ability to enter into it.

In terms of the 4 point test, I find the tenant has failed to provide sufficient evidence to satisfy me the landlord breached any term of the tenancy agreement, the Act or the regulations (point 1). Further, the tenant provided insufficient evidence to satisfy me the value of the damage or loss (point 3). For these reasons, the tenant's claim to be compensated for his lost possessions is dismissed without leave to reapply.

I note that the tenant sought "pain and suffering and punitive damages" in his application. These are known as "aggravated damages". These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

They must be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

I find the tenant did not establish how he suffered, only repeating that the landlord acted maliciously and with a disregard for decency. While I understand the tenant may feel the landlord acted disrespectfully, I do not find the landlord acted wilfully or recklessly. The evidence before me shows the landlord stored the tenant's possessions in their garage, without financial compensation, where the tenant was free to come and retrieve at any time. I accept the landlord's testimony that it wasn't until the landlord retained counsel and initiated a conversation about the tenant's possessions that the tenant made any attempt to retrieve them. I find the tenant has provided insufficient evidence to establish a claim for aggravated damages. This portion of the application is dismissed without leave to reapply.

Lastly, the tenant seeks an order that the landlord return an 1818 gold Spanish coin, home made shoe rack, Silver bracelet, and all paperwork in file box. The tenant acknowledged during the hearing that the shoe rack was destroyed, and he has no proof of possession of the gold coin or the silver bracelet. I also note that this application was made just shy of 2 years after the tenancy ended. I accept the

landlord's stance that they do not have the coin, the bracelet, or the tenant's box of paperwork in their possession. I dismiss this portion of the tenant's claim without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application 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: December 20, 2022

Residential Tenancy Branch