



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, MNSD**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
2. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act.

The hearing was conducted via teleconference. The Landlord's Agent, and Sr. Manager, and the Tenant and his Legal Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package served by registered mail on May 12, 2022, Canada Post Tracking Number on cover sheet of decision, Landlord confirmed receipt, deemed served on May 17, 2022;
- the Tenant's evidence package served by registered mail on December 16, 2022, Canada Post Tracking Number on cover sheet of decision, Landlord confirmed receipt, deemed served on December 21, 2022; and,

- the Landlord's evidence package served by registered mail on December 16, 2022, Canada Post Tracking Number on cover sheet of decision, Tenant confirmed receipt, deemed served on December 21, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on August 13, 2016. Monthly rent was \$375.00 payable on the first day of each month. A security deposit of \$187.50 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant was evicted from the rental unit on February 3, 2022 when a bailiff came into the Tenant's rental unit and began emptying the Tenant's belongings. The Tenant said he was not allowed to enter his rental unit. The Tenant said both the bailiff and the movers did not take instructions from him, they only took instructions from the Landlord. The movers did just drop off the Tenant's boxed items in the loading dock of the storage facility, and the Tenant carried the boxes into the storage lockers he rented.

The Tenant testified that at one point the Landlord called a halt to the packing and moving of the Tenant's belongings; however, there was still lots of items remaining in the rental unit. The Tenant submitted that he is claiming for the large furniture items that did not come out of his rental unit. He said he knows his air-conditioner remained in the window in the rental unit as the bailiff said if anything is screwed down or otherwise affixed, that they would not be moving them. The Tenant's speakers were fastened to his ceiling.

The Tenant said he returned to the rental unit the next day and wanted to see what remained in his rental unit, but the Landlord would not take him up there.

The Tenant's rented storage space was bought by another company, so he had to move all the boxed items to a new storage facility. The boxes are 2' X 2' X 2.5' in size and the Tenant said he has not had a chance to go through them and itemize what he has or what is missing. He is certain, though, that the physically larger items on his monetary worksheet are not accounted for as he would have seen these items when he was moving the boxes to the new storage facility.

The Tenant is now living in a shelter where he is situated in a cubicle in a gymnasium. He stated it is a horrendous living situation, but it is the best he can find based on his income at this time. The Tenant's monetary order worksheet includes:

ITEMS	AMOUNT
Prescription eyeglasses	\$600.00
Air conditioner	\$400.00
Weiser deadbolt door lock	\$30.00
Leather ranch coat	\$500.00
Tea chest	\$40.00
Coat rack	\$20.00
6' shelving unit	\$120.00
Solid wood bookcase	\$150.00
Large wire shelving unit	\$90.00
Wood drawer unit	\$60.00
Drawer unit with filing cabinet	\$80.00
Keyboard stand on wheels	\$60.00
2 X 17" computer monitors	\$300.00
Desk mount for 2 computer monitors	\$150.00
2 X stereo speakers	\$100.00
2 X wall mounted shelving	\$30.00
Bathroom rack and shelf	\$30.00
Microwave oven	\$120.00
Toaster oven	\$40.00
2-element hotplate	\$30.00
Converted bedframe	\$700.00
Duvet cover	\$120.00
Foot locker	\$80.00

ITEMS	AMOUNT
Wood storage chest	\$100.00
Wheeled tool cabinet	\$400.00
Work light	\$40.00
Cerwin Vega sound system	\$300.00
TOTALS:	\$4,690.00

The Landlord said the Tenant did enter the rental unit when the two bailiffs and four movers were there and was helping with wrapping items that were being packed up. The Landlord said the Tenant would leave for coffee or to have a cigarette and the packing and moving was an all-day event. The Landlord testified that the bailiff and movers packed up all the Tenant's belongings and moved them to the Tenant's storage locker. Items that were deemed contaminated were not packed up by the bailiff. The Landlord uploaded invoices prepared by the bailiff, but there was no evidence of the Tenant's items that had been removed or packed up into the boxes, or those items that were left behind due to being deemed contaminated.

The Landlord confirmed that the Tenant returned the following day and asked to see the items that remained behind. The Landlord stated she told the Tenant to contact the bailiff's office as he had 48 hours to enquire about any essential items.

The Tenant's forwarding address was personally given to the Landlord on February 18, 2022. The Landlord confirmed receipt of the Tenant's forwarding address.

The Landlord had an outstanding monetary order against the Tenant at the end of the tenancy. The Landlord was authorized to retain the \$100.00 application filing fee from a previous dispute resolution. The file number is noted on the cover sheet of this Decision.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit. The Landlord confirmed they did not return the Tenant's remaining \$87.50 of his security deposit.

The Tenant testified that the Landlord did not conduct move-in and move-out condition inspections with the Tenant.

Analysis

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.

Monetary Compensation

Liability for not complying with this Act or a tenancy agreement

- 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.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant submits that the Landlord’s obligations in regard to the Tenant’s property at a bailiff eviction are akin to what the *Residential Tenancy Regulation* (the “Regulation”)

specify in Part 5. The Landlord is obligated to secure the Tenant's belongings and the standard of care on the bailiff and the movers are the same as Part 5 of the Regulation as the Landlord is responsible for the people they hire. The Landlord did not provide evidence of the Tenant's items that were removed and packed. The Landlord did not provide evidence of the items that were deemed contaminated such that the bailiff and movers would not deal with them. The Landlord did not dispute the size of the boxes that were used to pack up the Tenant's rental unit. I find that the Landlord was obligated to keep a written inventory of the Tenant's property that was removed and packed up. I find it was the Landlord's obligation to advise the Tenant of the property that was stored or was disposed of.

The Tenant submitted a list of items some of which he says are so large, they would not have fit in the 2' X 2' X 2.5' boxes that were used to pack up his things. The Tenant uploaded estimates for the items he is claiming compensation. Some of the claimed amounts are lower than the average cost of similar items. I find that the Tenant acted reasonably to minimize the costs of storing his belongings which could have been placed on the Landlord for a period of not less than 60 days following the date of removal.

I find the Landlord has breached their obligations in the treatment of the Tenant's removed items during and after the eviction on February 3, 2022. The Tenant is missing some of the larger items on his monetary order worksheet, and I find the Landlord is responsible to compensate the Tenant for these items. Specifically, the items I find the Landlord is responsible for are: the air conditioner, the coat rack, the 6' shelving unit, the solid wood bookcase, the large wire shelving unit, the wood drawer unit, the drawer unit with filing cabinet, the keyboard stand on wheels, the microwave oven, the converted bedframe, the wood storage chest, the wheeled tool cabinet, and the work light. The total amount for all these items is **\$2,340.00** and I grant the Tenant compensation for these items pursuant to Sections 7 and 67 of the Act.

Security Deposit

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the

landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I accept the testimony of the parties and based on this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended February 3, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received this on February 18, 2022.

The Landlord had 15 days from February 18, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit. March 5, 2022 is the relevant date for the purposes of Section 38(1) of the Act.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of February 18, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

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- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) *the director has previously ordered the tenant to pay to the landlord, and*
 - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...*

The Landlord did not conduct move-in and move-out condition inspections with the Tenant and therefore extinguished their rights in relation to the security deposit. The Tenant was seeking to do a move-out condition inspection at the end of the tenancy, but the Landlord did not coordinate this with the Tenant. The Tenant did not extinguish his rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlord had an outstanding monetary order against the Tenant at the end of the tenancy from a previous Decision where the Landlord was authorized to retain \$100.00 from the Tenant's security deposit to cover the Landlord's application filing fee. Section 38(3) of the Act does apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and that only Section 38(3)(a) of the Act applies. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit that remains after the \$100.00 application filing fee is subtracted to the Tenant pursuant to Section 38(6) of the Act.

The Landlord must return \$175.00 ($(\$187.50 - \$100.00) \times 2 = \175.00), plus \$0.04 of interest to the Tenant. The total amount of the security deposit that must be returned to the Tenant is **\$175.04**.

In total, the Tenant is entitled to \$2,515.04 and I issue the Tenant a Monetary Order for this amount.

Conclusion

The Tenant is issued a Monetary Order for \$2,515.04. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the

Order may be filed in the Small Claims division of the Provincial 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: February 1, 2023

Residential Tenancy Branch