



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC RPP FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for an order directing the landlord to return their personal property, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the filing fee of \$100.

The tenant attended the teleconference hearing and was affirmed. The hearing process was explained to the tenant and an opportunity was given to ask questions about the hearing process. Thereafter the tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated November 4, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The tenant provided affirmed testimony that the Hearing Package was served on the landlord by registered mail on November 7, 2022 and the registered mail tracking number was RW 973 151 757 CA. According to the Canada Post online registered mail tracking website information the Hearing Package was returned to sender and marked "unclaimed." Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act. I find the landlord was duly served on the fifth day after mailing, which was November 12, 2022, in accordance with the Act.

RTB Rule 7.3 applies and states:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the landlord and the hearing continued without the landlord present.

Preliminary and Procedural Matter

The tenant confirmed the email addresses for the tenant and the landlord. Therefore, the decision will be emailed to both parties. The landlord's email address is listed on the cover page of this decision for ease of reference and I grant the tenant the ability to serve the landlord via email for any other disputes regarding this tenancy, pursuant to section 62(3) of the Act.

Issues to be Decided

- Has the tenant provided sufficient evidence to support an order directing the landlord to return the personal property of the tenant under the Act?
- Has the tenant provided sufficient evidence to support that the landlord should be directed to comply with the Act, regulation, or tenancy agreement?
- Should the tenant recover the cost of the filing fee under the Act?

Background and Evidence

The tenancy agreement was submitted in evidence and began on September 1, 2022. The tenant testified that they vacated on October 13, 2022. The tenant writes the following in their application:

We had a mutual agreement that if I move out in the end of October 2022 the landlord will waive my November's rent. And I moved my belongings last Thursday, October 13th, 2022. On that day, I was asked to return my keys by her daughter, as landlord's request. On October 14th, 2022, I messaged the landlord and my roommate to place my remaining stuff outside the garage for me to pick it up. The landlord responded with a cost breakdown that breach our agreement and refused to return my property.

[reproduced as written]

The tenant indicated in their evidence and testified that the landlord refused to return the following items unless the tenant paid money to the landlord:

1. Purple Raleigh “Transfer” Bike
2. Black bike lock
3. Blue Kitchen-Aid can-opener
4. Kitchen-Aid peeler
5. Four ladles

The items will be hereafter referred to as the Tenant Items. The tenant is seeking the return of the Tenant Items and the recovery of their filing fee and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the tenant, and on the balance of probabilities, I find the following.

Firstly, section 26(3) of the Act applies and states:

Rules about payment and non-payment of rent

26(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, **a landlord must not**

(a) **seize any personal property of the tenant, or**

(b) **prevent or interfere with the tenant's access to the tenant's personal property.**

[emphasis added]

I find that the landlord breached section 26(3)(a) and 26(3)(b) of the Act by seizing the Tenant Items described above.

Section 65(1)(d) of the Act also applies and states:

Director's orders: breach of Act, regulations or tenancy agreement

65(1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or

tenant has not complied with the Act, the regulations or a tenancy agreement, **the director may make any of the following orders:**

(d) **personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;**
[emphasis added]

Given the above, I make the following orders against the landlord:

- A. **I ORDER** the landlord to return all of the Tenant Items described above **undamaged** to the tenant no later than **March 15, 2023 at noon.**
- B. **I ORDER** the landlord to email the tenant at the tenant's email listed on the cover page of this decision to arrange for pickup at the rental unit address at a specific time and day **which must be between 9:00AM and 5:00PM** unless approved by the tenant via email to be outside of those timelines and **with at least 48 hours** notice prior to the pickup time.
- C. **I ORDER** the landlord comply with Act in the future and that this decision may be used as evidence in a future hearing of the landlord being found to have breached sections 26(3) and 65(1)(d) of the Act.

Should the landlord fail to comply with my orders, the tenant may apply to the RTB for compensation for the **full new replacement cost of all Tenant Items plus taxes.**

In addition, the tenant much wish to contact the RTB Compliance and Enforcement (RTB CEU). Additional information for the RTB CEU can be found at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement>

As the tenant's application was fully successful, I grant the tenant the recovery of the \$100 filing fee. I grant the tenant a monetary order in the amount of **\$100** owing by the landlord in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 67 and 72 of the Act.

Conclusion

The tenant's application is fully successful.

The landlord has been ordered as indicated above. Failure to comply with my orders may result in the tenant applying for monetary compensation under the Act as indicated above.

The tenant is granted a monetary order for \$100 owing by the landlord. The monetary order will be emailed to the tenant which must be served on the landlord, if necessary. Should the tenant require enforcement of the monetary order, the order must be first served on the landlord, which I order can be via email, with a demand for payment letter attached. Once the demand for payment date has passed, the monetary order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court. I caution the landlord that they can be liable for all costs related to enforcement of the monetary order, including court costs.

This decision will be emailed to both parties as indicated above.

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: March 2, 2023

Residential Tenancy Branch