



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, RPP, FFT

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation for a monetary loss or other money owed, a return of their security deposit, an order requiring the landlord to return their personal property and to recover the cost of the filing fee.

The tenant, the tenant's advocate, the landlord and the landlord's agent/son attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord through their agent confirmed receipt of the tenant's application and did not raise an issue with service of the tenant's evidence. The landlord provided no evidence prior to the hearing.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord, for a return of their security deposit, a return of personal property and recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy began on October 1, 2020 and ended on April 27, 2021. The tenant paid a security deposit in the amount of 10,000 yen.

The tenant's monetary claim is \$375 and the equivalent of 10,000 yen converted to Canadian currency. The tenant's claim also was a request for the return of their yearbook.

As to the tenant's claim for monetary compensation, the tenant wrote the following in their application:

I accidentally left \$375 at the landlord's house on the day I left. On October 4, 2022, I went to the landlord's house to retrieve my belongings. But I found that my money of \$375 was missing. The landlord said that it might be taken away by other homestay students, and she would try to contact them to get it back. On October 15, 2022, I sent a registered mail to the landlord, asking her to return my money and other personal items that were lost in her house. But she hasn't responded so far.

At the hearing, the tenant's testimony and their written documentary evidence correlated to this statement.

As to the tenant's claim for the security deposit to be returned, the tenant wrote the following in their application:

The landlord charged me ¥10,000 as a deposit, but she hasn't returned it to me. According to today's exchange rate, it is about \$1866. Before learning the regulations from RTB website, I didn't know that the tenant should send a forwarding address to the landlord within one year after the lease ended. However, the landlord has clearly indicated on the deposit receipt and WeChat that she would return the deposit through WeChat after I checked out. I think she should keep this promise.

At the hearing, the tenant confirmed the tenancy ended on April 27, 2021, and they provided their forwarding address in WeChat messages, to which the landlord did not respond, according to the submitted evidence. The tenant said they gave the landlord a formal written forwarding address on the standard RTB form, on October 13, 2022.

As to the tenant's claim for a return of their yearbook, the tenant wrote the following in their application:

After returning to China, I asked the landlord's son to help me get my Yearbook from school. On October 4, 2022, I went to the landlord's house to retrieve my belongings. But I found that my Yearbook was missing. The landlord said that it might be taken away by other homestay students, and she would try to contact them to get it back. On October 15, 2022, I sent a registered mail to the landlord, asking her to return my personal items that were lost in her home. But she hasn't responded so far.

Landlord's response

The landlord, through their agent, said that if the tenant left \$375 in their rental unit, the tenant should get that money. The agent agreed to pay the tenant \$375.

As to the yearbook, the agent said they looked for the yearbook in the basement, which is where the landlord put the tenant's belongings after they vacated, and could not find the yearbook. The landlord said that the only thing they could think of was that another homestay tenant took the property.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

As to the tenant's monetary claim of \$375, the landlord agreed that they will return the \$375. As a result, I grant the tenant's monetary claim of \$375.

As to the tenant's claim for their security deposit to be returned, section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on April 27, 2021, and the tenant did not provide their formal written forwarding address to the landlord until October 13, 2022. Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, **must** be given or served in the ways listed in this section of the Act. WeChat communication is not an approved method of delivery of those documents under the Act.

Section 39 of the Act states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished.

As the tenant did not give their written forwarding address in a way required by the Act by April 27, 2022, which was a year after the tenancy ended, I find the tenant's right to a return of the security deposit is extinguished. For this reason, I **dismiss** the tenant's request for their security deposit, **without leave to reapply**.

As to the tenant's claim for a return of their yearbook, I find the tenant submitted insufficient evidence that the landlord has breached the Act. The tenant left their yearbook in their rental unit, and the landlord said they have looked and could not find it.

I do not find the landlord was at fault in this matter or that the landlord has intentionally kept the yearbook. I find the tenant's belongings were the responsibility of the tenant.

For this reason, I **dismiss** the tenant's claim for a return of their yearbook.

I decline to grant the tenant recovery of their filing fee, as I have dismissed the tenant's claim for a return of their security deposit and yearbook. I only grant the tenant a

monetary order for \$375 as the landlord agreed to pay this amount, not from a finding that the tenant was entitled to it.

For the above reasons, I grant the tenant a monetary order in the amount of \$375. The monetary order is cancelled if the landlord pays the tenant this amount.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's claim for a return of their security deposit and yearbook is dismissed, without leave to reapply.

The tenant has been granted a monetary order in the amount of \$375.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 29, 2023

Residential Tenancy Branch