



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, RP, RPP, FFT

Introduction

The tenant filed an Application for Dispute Resolution on October 25, 2022 seeking:

- to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”)
- compensation for monetary loss or other money owed
- repairs made to the rental unit
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 24, 2023. The Tenant attended the hearing, and I provided them the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

Preliminary Matter – amended Application issues

The Tenant clarified that the tenancy already ended, and they moved out from the rental unit on October 8, 2022. Because the tenancy already ended, I dismiss the Tenant’s Application to dispute the 10-Day Notice, without leave to reapply.

With the tenancy already ended, I make no consideration on the need for repairs and dismiss this piece of the Tenant’s Application, without leave to reapply.

The Tenant’s move out from the rental unit involved bailiffs who handled the Tenant’s personal property. From this process the Tenant amended their Application on February 8, 2023 for the return and/or reimbursement for some of that personal property. I amend the Tenant’s Application to address those issues, and I consider the Tenant’s submissions and evidence on these issues below.

Preliminary Matter – service of Notice of Dispute Resolution Proceeding to Landlord

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that they served the document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out that they served the Notice of Dispute Resolution Proceeding to the Landlord via registered mail. From the tracking information they provided they found the package was delivered to the Landlord on October 28, 2022.

The Tenant also provided that they forwarded their evidence to the Landlord “up to four times” in preparation for this hearing. This was twice since they filed their Application in October.

Because the Tenant provided a tracking number for the initial Notice of Dispute Resolution Proceeding and evidence, I find they served that information to the Landlord, as required, in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Landlord’s absence.

The Tenant amended their Application on February 8, 2023. They presented they also used registered mail to notify the Landlord about this amendment. I find on a balance of probabilities that the Tenant utilized registered mail for this purpose, as they stated under affirmed oath in the hearing. The Tenant was aware of the process of disclosure and previously used registered mail on various pieces to the Landlord during the tenancy; therefore, I find it more likely than not they used this same method for their February amendment. The evidence on the particular issue of the Landlord’s return of the Tenant’s personal property included a two-page list of personal property items. I am satisfied the Tenant provided this to the Landlord as required, and I give this evidence consideration in the decision herein.

Issues to be Decided

- Is the Tenant entitled to compensation for monetary loss or other money owed pursuant to s. 67 of the *Act*?
- Is the Landlord obligated to return the personal property of the Tenant, pursuant to s. 62 of the *Act*?

- Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the Act?

Background and Evidence

As set out on the Tenant's Application, this tenancy started in September 2021. As the Tenant described in the hearing, the tenancy was fraught with issues from their perspective. This involved needed repairs to the rental unit that the Landlord had not completed despite the Tenant's requests. According to the Tenant, the state of the rental unit caused their family member's serious injury that prompted that family member's stay in the hospital.

The tenancy ended on October 8, 2022. The Landlord hired bailiffs to enforce an order of possession. The Tenant set out how the bailiffs put the Tenant's personal property into storage on that date. The Tenant described visiting to the rental unit on October 9; however, at that time they could not ascertain what of their personal items the Landlord was holding onto on that date. The Tenant described the Landlord having other individuals present who were claiming to be bailiffs, effectively barring the Tenant from the property to inquire on the status of all of their property.

The Landlord would not answer to the Tenant's calls for clarification, blocking the Tenant's number from contact. Approximately mid-October, by using a different phone line, the Tenant managed to have the Landlord answer a call; however, the Landlord hung up and the Tenant was not able to get any more information about personal belongings.

The Tenant secured new living arrangements starting on October 17, and on October 18 they visited to the rental unit to retrieve personal items.

This personal property sought out by the Tenant at that time was not present at the rental unit. This was "5%" of their own personal items by the Tenant's estimate, after the bailiffs utilized a 15-foot-by-20-foot storage area for 95% of the Tenant's items.

At the end of October, the Tenant had the storage unit temporarily moved to their new living arrangement in order to empty it and finalize their move elsewhere. The Tenant found that furniture items were missing, and when checking with the bailiffs who completed that work, the bailiffs stated their opinion that certain of the items must still be at the former rental unit.

In the February amendment to their original Application, the Tenant provided a list of items. They set out the issue in their Residential Tenancy Branch amendment form:

The landlord has our furniture (see list) OR [they] know where said furniture is. We demand the return OR reimbursement of these items before legal action is taken.

Includes list of missing/stolen items – police file # & bailiff email address

In the hearing, the Tenant stated that the police started an investigation. The police instructed the Tenant to go to the Residential Tenancy Branch for restitution on missing personal property from the Landlord. I reproduce the Tenant's list in its entirety below:

In the hearing, the Tenant made reference to the amounts set out on their list. They did not give a sum total amount for all of these items, stating "most prices were listed" and they were "wanting to be fair" in these circumstances, in reference to the amounts set out therein. They described the most expensive item as the leather love seat, and the power tools as listed were "practically new".

The Tenant also described irreplaceable personal items having sentimental value to them. These are shown on the list and highlighted with the Tenant's demand for their return.

In total, for all items listed, on my accounting, the value for all items is \$6,575. This is a line-by-line addition of all items that have an assigned dollar value below:

Items Missing

Furniture:

- Black leather sofa & love seat - 4 years old - Almost new: \$2,000
- Wood coffee table - 10 years old - Good condition: \$200
- 2 pink reclining chairs - Fair condition repairable: \$150 ea
- 2 accent chairs - 5 years old - Good condition: \$200
- 3 glass & brass tables - One minor damage - 2 like new: \$150
- 1 - 9x9 Area Rug - Fair condition - Washable
- 1 - 4x4 side table - Recently restored: \$200 at IKEA
- 1 - Black roll top Duster Vintage:
- 1 - Bed room set High boy & long dresser - Good condition: \$400
- 1 - Bedroom Wardrobe IKEA 3 years old - Like new: \$400
- 2 - Night end tables - Good condition: \$35 ea
- 1 - Computer table - 3 years old - like new: \$80 at IKEA
- 1 - fold-a-bed - 3 year old - \$200 at Walmart
- 1 - lazy-boy couch 5 years old good condition: \$200. ^{or maybe}
- 1 - 4 burner BBQ - Fixable with replacement parts: \$80
- 1 - Brazier - outdoor fire pit - 4 years old: \$150. ^{or Home Depot}
- 1 - Queen Size Bed - 4 years old good condition: \$200

Tools & Accessories etc.

- * My Father's 5 Ft tall Mastercraft tool box full of tools - still
- Makita table saw - New \$270 wrapped in packing plastic * I Demand
- Makita circular saw - New \$400 This To Be Returned! *
- Makita Plug-In Drill variable speed: \$60, New at Canadian Tire
- 2 wooden shelves used \$50 ea
- 1 - 10ft Ladder "A" Frame Aluminum - Good condition: \$150
- 1 - 12 Ft extendable Ladder - like new: \$190 MKT price
- 1 - Mult-Foldable Ladder - Brand New: \$170
- 1 - wheel barrow - well used: \$50 - Maybe \$30
- 1 - Plastic Patio set w/ Parson's & 5 chairs 6 years old: \$175
- 1 - Patio swing set - 9 years old Fair condition: \$200

* = Demand Returned

Clothes & Misc.

- * 1 - Canvas 20lbs Jack-a-rabbit Duster Custom
- * 1 - Large leather Biker style saddle bag satchel
- * 5 - Star Wars Collectable T-shirts - Good condition
- * 1 - Brief case full of Art supplies, Art books & original Art.
- 1 - Display case for my LE80 - Good Condition
- * 2 - leather Jackets: One was My Father's & One was mine
- * 1 - 1977 Vintage Star Wars Jacket

In the Tenant's initial Application signed September 29, 2022, the Tenant made the following description of compensation, with the total amount being \$15,000:

Due to abhorrent conditions to the house caused by the landlord's neglect my [parent] got hurt and can no longer look after homestay students (cost: \$1,100 - \$1,500 per 2 students per month for 3 months)

Due to my [parent's] injuries I had to take time off, 6 weeks, from my work and I lost potential clients and had to give refunds to those I missed. Cost \$5,000.

No electricity in 30% of my downstairs, flood damage, rats in walls I had to catch myself. Cost: pending.

In the hearing, the Tenant provided the following approximate amounts for further compensation:

- moving expenses: \$900 - \$1,000 – this was the cost of moving the storage bin utilized upon their move out to their new living arrangement
- \$2,000 - \$3,000 – this was the cost for one-half month's rent for what they paid to the Landlord for the month of October prior to their move out on October 8, and also the month of November at their new rental arrangement – this is for being "kicked out unjustifiably" by the Landlord
- \$4,000 – six weeks' salary to the Tenant, owed because they could not leave their injured parent alone after that injury – the Tenant could not accept new clients in their occupation, at \$250 for a four-hour package and \$500 for a ten-hour package, for the period from April 23 to late May/early June

For evidence, the Tenant provided photos showing the state of the rental unit throughout. This was miscellaneous details of the level of cleanliness and damage to separate areas within the rental unit and the yard space. The Tenant's parent suffered an injury in the rental unit, as alleged from the state of disrepair and neglect. A copy of a certificate from a health facility shows that parent's visit due to a fall on the stairs, dated May 9, 2022.

Analysis

The Act s. 65 provides that an arbitrator may order that "personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned."

From what the Tenant provides here in their submissions, I find the Landlord is holding items of the Tenant's personal property, with no prior arrangement in place for them to do so. This

was the result of the bailiff-imposed move-out on December 8, 2022. I find the Tenant credible on the details of missing items, with no conflicting information from them that the materials were otherwise disposed. The Tenant described in detail the age and approximate value of each piece; I find this verifies that these pieces exist. This is also based on the description of the move out where their free passage into the unit was blocked, and their property handled by others. I find it plausible that some items were left behind, which makes them within the Landlord's control.

Because of these facts, I find on a balance of probabilities that the Landlord is holding personal property belonging to the Tenant. The Landlord must return these items to the Tenant forthwith, and in any event by April 15, 2023.

I dismiss the Tenant's claim for compensation of the cost of these personal items at this time. This is with leave to reapply, which means if the Landlord does not return the Tenant's personal property, the Tenant may reapply for monetary compensation for the value of the items. I advise the Tenant to prepare an abundance of evidence on the items' value.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

For each of the Tenant's claims outlined above, I find as follows:

- The Tenant did not provide proof of the cost of moving expenses (such as an invoice). Moreover, the Tenant estimated that value in the hearing. I therefore cannot make a finding on this expense without evidence of the value of the monetary loss.
- The tenancy ended by way of an Order of Possession to the Landlord, which was the result of a dispute hearing procedure. This was therefore a legal way for the Landlord to end the tenancy in these circumstances, and there was no violation of the *Act* by the

Landlord that would constitute a reason for compensation to the Tenant. I find the Tenant's claim of being "kicked out unjustifiably" is their opinion of the matter. Any matter involving bailiffs has been legally sanctioned by an Order of Possession; this necessarily involves the Residential Tenancy Branch who reviewed the matter and closed a dispute resolution proceeding.

- I find what the Tenant provided as missing salary is an estimate of their loss of income for an approximate six week period. I require substantially more proof of this amount as opposed to an estimate based on an hourly rate. This also requires a breakdown of daily income loss. I can't establish the value of the loss of income to the Tenant with scant evidence, and a rough estimate provided verbally in the hearing. Also, there is no comparison of a normal weeks' salary to even gauge whether this estimate is accurate and more based in fact. There is insufficient evidence of the loss of income to the Tenant here.

On other items – specifically, the alleged lack of income from homestay students, and loss of electricity in the downstairs and other issues – the Tenant provided no proof of the costs thereof. There is also no reference to dates, or communication to prove the Landlord was not acting on their obligations to repair.

Aside from the value of their personal items for which the Tenant may reapply should the Landlord not return their property to them, I dismiss the other pieces of the Tenant's claim, without leave to reapply.

Conclusion

The Landlord must return the Tenant's personal property by April 15, 2023. This affords the Landlord a reasonable opportunity to present the items to the Tenant in a damage-free condition to the Tenant. This decision stands as authority that the Landlord did not comply with the *Act* with respect to the Tenant's personal property and seized the Tenant's property. I order the return of that property, as per s. 65(1)(e) of the *Act*.

I order the Landlord to pay the Tenant the amount of \$100 for the Application filing fee. I grant the Tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 s. 9.1(1) of the *Act*.

Dated: March 16, 2023