



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

The parties attended.

The hearing was reconvened following two previous hearings which were adjourned with Interim Decisions on November 23 and December 7, 2023.

Issue(s) to be Decided

Is the tenant entitled to a monetary award under section 67?

Background and Evidence

The three hearings in this Application for Dispute Resolution took a total of four hours. I granted two Interim Decisions. The parties submitted substantial conflicting testimony.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I only refer to relevant, admissible evidence in support of my conclusions and the facts as I find them.

Overview

The tenant claims compensation of \$35,000.00 for loss of personal property following his eviction from the rental unit on June 1, 2023. The tenant was unable to remove all his belongings before the landlord prevented access. The landlord did not exercise a duty of care for the possessions. He did not store or safeguard them. As a result, the possessions were vandalized, stolen, or ruined from exposure. The tenant estimated his loss at \$74,000.00.

The landlord denied the truth of the tenant's narrative. He said the tenant had adequate time to remove his possessions after he obtained an Order of Possession on June 1, 2023. Anything left was garbage, junk, valueless and abandoned. He owes the tenant nothing. The tenant refused to comply with the landlord's conditions for entry after June 19, 2023, which were to sign his waiver of liability form. The landlord has no obligation under the Act.

Tenancy

The tenancy of a house began March 1, 2019. The rent was \$800 monthly payable on the first of the month. The tenant paid a security deposit of \$400.00.

The parties signed a one-page tenancy agreement which included the provision that the tenant was responsible for snow removal for his parking and the driveway. The agreement also states, "the property is in a flood plain and there is no drinkable water available."

Tenant's Claim

The tenant testified as follows.

1. The landlord's property is 4.3 acres. The rental unit is a house and undefined surrounding area on which he had built a garage, stored vehicles and kept belongings. The tenant said the rental unit was "a bit over half of the acreage."
2. The tenant lived there with his partner and child. Also, his two children from a previous relationship lived with him half time. So, all told, two adults and three children occupied the unit.
3. The parties had a business relationship as well as a tenancy agreement. This relationship included a commercial lease for part of the property on which the rental unit was located and where the tenant operated now defunct businesses (coffee shop, thrift store and tire shop). The tenant sometimes did jobs for the landlord, for which the landlord owes payment.
4. The tenant claimed the landlord failed to pay him for his work and therefore he could not pay his rent on time occasionally. The parties fell out.
5. The landlord retaliated for resentments against the tenant and began trying to get the tenant to move out.
6. The landlord issued at least two eviction notices, a Two Month Notice to End Tenancy for Landlord's Occupancy (now moot) and a One Month Notice for repeated late payment of rent, under which the landlord obtained an Order of Possession on June 1, 2023, in RTB proceedings referenced on the first page.
7. The landlord also brought BC Supreme Court proceedings relating to the commercial lease. The landlord obtained a Writ of Possession on May 8, 2023, in that matter. The tenant said he did not dispute the application and mistakenly understood the application would be adjourned because of an evacuation directive at the time affecting the geographical location of the rental unit.
8. When the landlord obtained the RTB Order of Possession on [June 1, 2023](#), he gave the tenant 19 days to remove his belongings.

9. The tenant removed some of his possessions and stored the rest near the residence. He said he did the best he could, but it was slow going because of not having any place to move to, lack of help, and personal difficult circumstances including a recent birth to the couple.
10. The tenant put clothes, footwear, and personal possessions in 20-30 large garbage bags. He put many of these bags in a garage he constructed next to the rental unit. He piled some under an eavestrough to keep out the rain. He bought tents to provide protection for other items. Everything was under cover except for larger items, such as a truck camper.
11. On July 19, 2023, the landlord ordered the tenant off the property. The tenant said that because of his personal situation and private challenges, he was unable to remove all his possessions before the deadline. The landlord called the police who escorted the tenant off the property.
12. After July 19, 2023, the tenant said he no longer had supervision or control over his possessions. Efforts to arrange access were frustrating and futile. This changed when he was granted access for removal in the two earlier Interim Decisions in these proceedings of November 23 and December 7, 2023.
13. Pursuant to the Supreme Court Writ, the landlord retained a bailiff who attended and placed some of the tenant's possessions in a storage container on the landlord's property. In a letter from the bailiff, a copy of which was submitted, the bailiff said there were too many possessions to store everything.
14. Shortly afterwards, the parties met and agreed the tenant could have access to remove his belongings.
15. The landlord then said he would only allow the tenant access if the tenant signed a form releasing the landlord of all liability which the landlord drafted. The tenant refused to sign as he was uncertain of the meaning and the risk. The landlord denied access without the signed waiver. The tenant attempted to schedule times

for pick-up which did not work out.

16. After June 19, 2023, the tenant claimed people started rummaging unchallenged through his possessions, taking what they wanted, destroying, and vandalizing items, and leaving the rest strewn about, open to the elements. Unknown people took anything of value. Costly items, such as a printer and truck camper, were vandalized and ruined. The tenant submitted many supporting photographs.
17. The tenant complained to the police who said it was a civil matter. The tenant asked the landlord to stop the thefts.
18. The tenant filed an application in the RTB for the return of his possessions and compensation on August 19, 2023.
19. Other than the larger items placed in a storage container by the bailiff, the landlord did not place any of the tenant's possessions in storage or protect them. They remained scattered about, bags opened and contents spilling out, as evidenced by the photographs.
20. By Interim Decision of November 23, 2023 in this Application, I directed that the tenant could attend the unit for the purposes of collecting belongings. I directed that both parties submit written submissions to include a valuation of the damaged or missing items.
21. The hearing reconvened on December 7, 2023.
22. At the reconvened hearing, the tenant reported that he went to the unit and removed some items pursuant to the Interim Decision. However, anything of value had been removed or vandalized. For example:
 - a. The tenant's locked truck camper had been broken into, looted, and demolished.
 - b. His copier, previously functioning, had been opened, kicked in, and left open to the weather.

- c. His collection of dozens of porcelain dolls was in an opened rain filled frozen container, ruining them.
 - d. A new restaurant booth from a coffee shop business was ruined by exposure to the elements.
 - e. Collectibles, family clothes, memorabilia, furnishings, and many other items were taken or ruined.
 - f. One of the tenant's acquaintances returned a coin collection to the tenant, apologized, and said he had been encouraged by another person, allegedly with the permission of the landlord, to go through the tenant's belongings. and take what he wanted.
23. The tenant has no receipts or evidence of purchase as all his financial documents were destroyed or could not be located. The tenant submitted no estimates of replacement cost.
24. At the reconvened hearing on December 7, 2023, the parties agreed the tenant could attend the unit and removed possessions in the locked container. The tenant attended on December 11, 2023, at 8 am pursuant to the parties' agreement at the hearing; the container was locked for some hours until the landlord left a note telling the tenant where to get the key. The landlord explained he waited until he received a copy of the Interim Decision by email.
25. The landlord's actions in not letting the tenant have enough time to remove his possessions and not exercising a duty of care have had serious consequences on his mental and physical health. His family has left him. Most of his belongings including irreplaceable items such as photographs are missing or ruined.
26. The landlord threatened tenant with legal proceedings if the tenant did not walk away and stop trying to get his possessions.
27. The tenant submitted a spreadsheet giving an estimate of the value of the ruined or missing personal possession in total \$74,552.94. The tenant did not provide receipts of purchase, proof of age, or estimates from vendors for replacement value. A partial list of some of the reported ruined or missing items follows:

Item	Amount
Hp DesignJet 111 printer	\$3,213.47
Travel camper inbox truck	\$5,000.00
Commercial coffee maker	\$4,000.00
Two large menu display boards	\$2,300.00
Labor equipment, floor jacks, lathe stand etc.	\$2,000.00
Lawn mowers, weed whackers, chainsaws	\$2,200.00
Clothing rack displays x 15	\$3,500.00
Gaming system's Xbox, Xbox 360, game gear, Sega, original Nintendo, Nintendo Wii, ps2, ps3, Nintendo advance plus cords	\$2,500.00
Dining room set table, hutch 7 chairs	\$3,500.00
Antique plates, cups, sewing machines, crystals, rocks, toys, advertising, comics, trinkets	\$4,000.00
Collection - 50 porcelain dolls	\$7,500.00
Total	\$39,713.47

28. The tenant claimed the landlord is responsible to compensate him for his estimated losses.

Landlord's Evidence

1. The landlord denied most of the tenant's narrative and testified as follows.
2. The landlord said the rental unit was the driveway, parking area, and house only. Most of the acreage was under the control of the landlord at all times. The tenant left the items on the landlord's property near the rented house.
3. The tenant is a liar. Nothing he says is dependable. The landlord, not the tenant, built the garage on the property where the tenant stored some of his possessions.
4. The parties had a commercial lease. The tenant did not comply with the terms and owes the landlord money. The landlord owes the tenant nothing.
5. The landlord brought BC Supreme Court proceedings and obtained a Writ of Possession for the commercial lease on May 8, 2023.
6. The landlord obtained an Order of Possession on the rental home from the RTB on June 1, 2023.
7. The landlord gave the tenant 19 days after the RTB Order of Possession to get his possessions off the property.
8. Anything remaining after that time was junk and valueless.
9. The landlord denied the garage on the property in which the tenant stored some of his belongings belonged to the tenant or he had any right to use it.
10. The landlord's caretaker moved into one of the buildings on the property to protect the possessions from vandalism and theft. The caretaker adequately protected the tenant's belongings. Nothing of significance or value was stolen. It is not the landlord's fault if anything was taken or ruined by exposure.
11. While it was not his obligation to keep the tenant's possessions secure, the landlord did his best to stop pilfering, theft, and vandalism, which the landlord

acknowledged did occur to an insignificant degree.

12. The landlord did not move any of the items to storage and was under no obligation to do so.
13. The landlord did not conduct an inventory of the tenant's possessions left after July 19, 2023.
14. The landlord did not threaten tenant with legal proceedings if the tenant did not walk away and stop trying to get his possessions.
15. The bailiff in the BCSC proceedings placed some of the tenant's items in a storage container. The bailiff stated that there were too many items to store. The tenant has subsequently removed the items he wants.
16. After the 19-day period following the granting of the Order of Possession, the landlord wanted the tenant to sign a document absolving him of all responsibility for the possessions. This was a reasonable request which the tenant refused. It is the tenant's own fault he did not get his possessions back. By refusing the sign, the waiver, the tenant is responsible for the denial of access to his possessions.
17. The landlord did his best to agree with the tenant on when he could go to the unit and collect his belongings. It was not the landlord's fault that the parties could not reach any agreement. The landlord did nothing unlawful to obstruct or prevent the tenant from lawfully collecting his possessions.
18. When the Arbitrator ordered the landlord to allow the tenant to access his property in the interim decisions of November 23 and December 7, 2023, the landlord did so and complied with the terms of the orders.
19. It is not his concern or fault that exposure to weather damaged items. He did not encourage anyone to open the containers or leave things strewn about. He is not responsible for what may have happened to the tenant's belongings. He did not store the items or protect them because he did not think he had to.

20. The landlord acknowledged he did not store the tenant's possessions. He did not comply with the Act as he did not think the Act applied.
21. The landlord acknowledged he did not comply with the terms of the Interim Decision of November 23, 2023 that he submit written submissions for reasons that were beyond his control, that is, an unexplained inability to upload.
22. The landlord requested the tenant's application be dismissed without leave to reapply.
23. The landlord said he will pursue legal proceedings against the tenant and will claim reimbursement for lost rent, and other expenses such as the bailiff fees.

Analysis

Credibility

In making my decision, I have considered the credibility of the parties. I reviewed each party's version of events during the hearing for accuracy and each party had an opportunity to comment.

The tenant's testimony was straightforward and matter of fact. He clearly and convincingly described the events leading to the loss of possessions and the extent of the damage. His description of what took place was believable. The tenant credibly described his efforts to move out in the time he had available as well as his efforts to salvage his possessions. The tenant's testimony was supported by many photographs.

I have considered the landlord's denial of the tenant's version of events. I am not persuaded by the landlord's narrative.

I find the tenant's version of events is the narrative that most likely reflects what happened given the facts as I understand them. Therefore, I accept the tenant's credible evidence about the circumstances surrounding the tenancy and the moving-out. I give most weight to the tenant's evidence. Where the evidence of the parties' conflicts, I prefer

the tenant's version.

Standard of Proof

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the landlord) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (tenant) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act.

I consider each of the above four tests. I find as follows.

- 1. Has the respondent party (the landlord) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?*

I must first consider if the Act applies to the tenancy agreement. I find it does.

I have considered the definitions in the Act and RTB *Policy Guideline 14 Type of Tenancy*. The parties are landlord and tenant within the meaning of the Act, and I reject the landlord's claim that the Act does not apply.

I find the tenant rented a house and yard including a driveway and parking space (the

rental unit) from the landlord. The tenant lived there with his partner and children. The tenancy was a 1-page residential tenancy contract signed by the parties requiring the tenant to pay rent monthly. The landlord owned the property on which the rental unit is located and collected rent from the tenant. The landlord obtained an Order of Possession from the RTB and thereby acknowledged jurisdiction.

Next, I will consider the first test, that is, whether the landlord failed to act in compliance with the Act.

Considering all the facts as I find them, I conclude the tenant has met the burden of proof under the first test to show that the landlord acted in a manner that was in violation of the Act.

Section 30 of the Act states the landlord's has a duty of care which I find the landlord has not exercised in this case. The section says that when dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen because of an inappropriate method of removal or an unsuitable place of storage.

Section 24 of the *Residential Tenancy Regulation* (the "Regulation") provides that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the property in the unit after vacating the unit. I find the tenant consistently and diligently engaged in removing his possessions from the unit from the time the Order of Possession was granted (June 1, 2023) and June 19, 2023, when the landlord refused any further entry. The landlord then hindered or denied access by the tenant to his possessions which led to damage to them including theft, vandalism, and destruction from exposure to weather.

Following June 19, 2023, I find the landlord did not exercise a duty of care toward the possessions. While the landlord may have had a caretaker living on the acreage, I find the caretaker did not provide the required security and did not protect the possessions from theft and damage. This is apparent in the many photographs submitted by the tenant.

The landlord argued that the tenant abandoned the possessions. If this is correct, which I do not find, the landlord has an obligations under section 25 of the Regulation. The landlord must store the tenant's personal property for no less than 60 and keep a written inventory of the property. The landlord did not comply with his responsibilities for abandoned property.

During the relevant period from June 1, 2023 to December 13, 2023, the tenant consistently attempted to remove his possessions and did not abandon them. The tenant had not substantially removed his personal property which is shown in the supporting photographs until the Interim Decisions of November 23 and December 7, 2023. The landlord did not assure the tenant had all reasonable opportunity to remove his possessions until ordered to do so. The landlord had a duty of care for the items which were under his control which he did not meet. He did not ensure that the possessions were not damaged, lost or stolen or were stored safely. The landlord's actions and failure to act directly resulted in the loss or damage of many of the tenant's possessions.

After the tenant brought this application on August 19, 2023, the Interim Decisions directed the tenant to return twice to the property to remove possessions. The parties agreed that any possessions remaining after December 13, 2023, are abandoned and the landlord could dispose of them without notice.

2. *If yes, did the loss or damage result from the non-compliance?*

As stated above, I conclude the tenant has met the burden of proof under the first test to show that the landlord acted in a manner that was in violation of the Act.

Considering the evidence, I find that many of the tenant's possessions remaining at the unit were stolen, damaged or destroyed because the landlord failed to allow the tenant to retrieve them and failed to exercise a duty of care to see they were not stolen or damaged. The landlord's non-compliance caused the damage the tenant has described and for which he seeks compensation.

3. *Has the applicant (tenant) proven the amount or value of their damage or loss?*

There has been an infraction by the landlord of the tenant's legal rights. However, I am unable to determine the amount of the tenant's damages because of the lack of receipts, which is understandable given the circumstances. I am unable to accurately determine the age of items, their original cost, or the replacement cost.

The landlord did not help in determining the value of items although I offered the landlord an opportunity to provide his opinion on valuation. The landlord denied the tenant's possessions had any value whatsoever.

Nevertheless, I am satisfied that the tenant incurred losses based on the tenant's credible evidence and supporting photographs.

I have referenced RTB *Policy Guideline 16: Compensation for Damage or Loss*. This Guideline states that an award may be made where there has been an infraction of a legal right, and the applicant has not proven the extent of the loss.

In the circumstances, I grant the tenant an award of 15% of the amount claimed of \$35,000.00 which is \$5,250.00.

4. *Has the applicant done whatever is reasonable to minimize the damage or loss?*

Under section 7 (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. I find the tenant has established they have mitigated or minimized the loss or damage. They attempted to remove their possessions as quickly as they could. They requested the help of the police and the bailiff to get access to their possessions after the landlord denied entry. They brought an application to the RTB in a timely manner. The tenant took all reasonable steps to reduce their losses and recover their possessions.

Summary

I find the tenant has met the burden of proof for the application. I grant the tenant's application.

I grant the tenant a Monetary Order of \$5,250.00

Conclusion

I grant the tenant a Monetary Order of \$5,250.00. This Monetary Order must be served on the landlord. The Order may be filed and enforced in the courts of the Province of BC.

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: January 2, 2024

Residential Tenancy Branch