



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to two applications from the Tenant.

The Tenant filed their first application on December 16, 2023, wherein they seek the return of double their security deposit, in the amount of \$1,800.00.

The Tenant filed their second application on December 18, 2023. In their second application, the Tenant seeks \$10,748.39 in compensation from the Landlord in relation to personal possessions they say the Landlord disposed of unlawfully when this tenancy ended.

The Tenant attended the hearing, but the Landlord did not. The Landlord did not send an agent.

Service of Records

On November 30, 2023, both parties attended arbitration before a Residential Tenancy Branch arbitrator regarding various issues related to this tenancy. Arbitrator IB issued a decision following the hearing, dated November 30, 2023, which I have read (the **Previous Decision**). I have copied the file number for the previous dispute on the cover page of my decision.

In the Previous Decision, Arbitrator IB wrote the following:

The Tenant said that she registered mailed her forwarding address to the Landlord's address for service mentioned in the tenancy agreement on November 13, 2023. The tracking number is recorded on the cover page of this decision.

The Tenant submitted into evidence form RTB42 indicating her forwarding address, which is also recorded on the cover page of this decision.

The Landlord affirmed he did not receive the Tenant's forwarding address.

Based on the Tenant's convincing testimony, form RTB42, and the tracking number, I find the Tenant registered mailed the forwarding address to the Landlord on November 13, 2023.

I deem the Landlord received the forwarding address on November 18, 2023, per section 90(c) of the *Act*.

Both parties confirmed their current addresses for service during the hearing. The addresses are recorded on the cover page of this decision.

I have reviewed the cover page of IB's decision, and I note they have written both parties' forwarding addresses on the cover page of their decision. The Tenant testified that they served the Landlord with both of their applications and all their documentary evidence on December 22, 2023, at the same address stated on the cover page of IB's decision. I note that the same address for service provided by the Landlord to the previous arbitrator, which is recorded on the cover page of the Previous Decision, was also included on the first page of the parties' tenancy agreement, as well as a document titled "shelter information".

The Tenant directed me to their submitted Canada Post Customer Receipt bearing a tracking number. On one of the submitted receipts, I can see the Landlord's postal code, as well as the Landlord's name.

Based on all the above, I accept the Tenant's testimony that they served the Landlord with both their applications and all other records submitted to the Residential Tenancy Branch as evidence, by registered mail and I find the Landlord was deemed served with the Tenant's two applications and associated documentary evidence, pursuant to section 90 of the *Act*, on December 27, 2023, the fifth day of the registered mailing, pursuant to sections 88 and 89 of the *Act*.

The Landlord did not submit any records for consideration.

Background Facts and Evidence

I have reviewed all evidence, including the testimony of the Tenant, but I will refer only to what I find relevant to my decision.

The Tenant testified that this tenancy began on June 30, 2022. In the Previous Decision, Arbitrator IB found that this tenancy ended on September 23, 2023.

The Tenant testified that they paid \$900.00 in security deposit to the Landlord at the start of this tenancy, which has never been returned to them. They testified that the Landlord has not served them with any applications.

The Tenant testified that when the tenancy ended, they were away from the Rental Unit in another province. They testified that on or about September 22, 2023, the Landlord attended the Rental Unit with five other individuals, weapons, and dogs, and they

evicted the Rental Unit's occupants. They testified that the Landlord then emptied the Rental Unit of all the Tenant's personal possessions and belongings, which they are seeking compensation for.

In the Previous Decision, Arbitrator DA found "the Landlord breached Regulation 25(1)" by disposing the Tenant's personal belongings without first storing the Tenant's personal belongings for a period of 60 days after the date of the removal. Arbitrator IB then found that they Landlord no longer has any of the Tenant's personal possessions, because they were disposed of and gave leave to the Tenant to submit a monetary claim for compensation.

The Tenant submitted a monetary order worksheet and sought compensation for the following items and in the amounts stated below:

- Circular, Mitre and Reciprocal Saws \$639.97.
- Pool table \$4,798.00.
- Dart board \$99.00
- Compressor \$159.99
- Complete Socket Set \$219.99
- Shop Vacuum \$199.99
- Drill and Impact Set \$399.99
- Work Light \$54.99
- 2 Window air conditioners \$319.98.
- Arbonne Skincare set \$380.80.
- Double Bed Frame \$269.95.
- Double Mattress \$820.00.
- Dressers \$169.95 x3 = \$509.85.
- Nightstands \$99.95 x2 = \$199.90.
- Queen Frame \$280.99.
- Queen Mattress \$895.00.
- Food, clothing, and toys (no estimates provided but \$500 requested).

The Tenant could not provide me with the age of the above items and testified that they did not acquire all the above items at the same time.

The Tenant submitted pictures of a large industrial dumpster typically seen alongside construction sites. They testified that the submitted pictures were taken by an agent of the Tenant on or about September 25, 2023 (two days after the tenancy ended). Based on the submitted pictures, I can see pieces of broken furniture all the way to the top of the dumpster. On the body of the dumpster, I can see a phone number ending in 7477, along with the logo of the company. The name JLDL is visible.

The Tenant submitted a picture of the near-empty Rental Unit, which they testified was taken on or about September 25, 2023, by their agent. They testified that as visible in

the picture, the only item remaining in the Rental Unit at the time the picture was taken was a dining room table.

The Tenant testified that the Landlord disposed of everything they owned, including their makeup.

The Tenant submitted pictures of price tags they took in various hardware stores of similar items they say they owned at the Rental Unit when they were disposed of by the Landlord.

They testified that the Landlord disposed a large billiards table that they acquired second-hand. They testified that billiards tables do not lose their value. The Tenant could not recall how much they paid for their billiards table. In their monetary order worksheet, the billiards table is the most expensive item, at \$4,798.00 (nearly half the amount being sought by the Tenant).

The Tenant referred me to nine pictures they say were taken by the Tenant at the Rental Unit in June 2023, or July 2023 (approximately three months prior to the end of the tenancy), with the Tenant's personal possessions visible. I can see some of the items listed in the Tenant's monetary order worksheet.

Analysis

The standard of proof in this tribunal is balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

As the Landlord did not attend and as they did not send an agent, the Tenant's affirmed testimonies went unopposed.

As with Arbitrator IB, I found the Tenant a credible witness. They were forthcoming and non-argumentative, and their testimony was sufficiently backed by documentary evidence.

Return of Security Deposit

Section 23(1) of the *Act* establishes that at the start of a tenancy, a landlord and a tenant must inspect the condition of the rental unit together and the landlord must complete a condition inspection report with both the landlord and the tenant signing the report.

The Tenant testified that the Landlord never completed a condition inspection report at the start of the tenancy. I accept the Tenant's unopposed testimony and find the Landlord breached section 23(1) of the *Act*.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not provide the Tenant two opportunities for inspection and if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore, I find the Landlord extinguished their right to make a claim against the Tenant's damage deposit in relation to damage to the Rental Unit.

I have searched the Residential Tenancy Branch database. There is no evidence before me that the Landlord ever filed an application in relation to the Tenant's security deposit for either damages or in relation to unpaid rent.

Based on my review of the Previous Decision and the Tenant's testimony, I find that the Landlord is still holding onto the Tenant's \$900.00 security deposit.

Section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 38 of the *Act* requires the Landlord to either return all the Tenant's security deposit or file for a dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the Tenant's forwarding address in writing (whichever is later).

In this case, the tenancy ended on September 23, 2023, and in the Previous Decision Arbitrator IB found that the Landlord was deemed served with the Tenant's forwarding address on November 18, 2023.

Section 38(6) of the *Act* states that if the Landlord does not return the deposit or file a claim against the tenant within 15 days, the Landlord must pay the tenant double the amount of the deposit.

I have already found the Landlord has not yet returned the security deposit. Therefore, the Tenant is entitled to the return of double their security deposit, with interest on the single portion of the deposit.

I grant the Tenant's first application and award the Tenant \$1,800.00 (double security deposit), along with \$25.21 in interest, calculated from June 30, 2022, to April 22, 2024.

Compensation for Monetary Loss

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. 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. The Residential Tenancy Branch Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the *Act* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

Arbitrator IB found the Landlord in violation of section 25(1) of the *Residential Tenancy Regulation*, because the Landlord, as admitted by the Landlord during the previous hearing, failed to store the Tenant's belongings for a period of 60 days.

A landlord's obligations in relation to a tenant's personal belongings at the end of a tenancy are outlined under section 25 of the *Regulation*. Apart from what was outlined by Arbitrator IB, I must make note of section 25(1)(b) and (c), which state that a landlord must keep a written inventory of the property stored and keep particulars of the disposition of the property for two years following the date of disposition.

In this case there is no evidence that the Landlord ever created a list. There is no evidence of the same before me. I accept the Tenant's uncontested testimony that the 17 items listed in their monetary order worksheet (copied above) were disposed of by the Landlord.

In relation to the four-part test and section 67 of the *Act*, the Tenant has already proven that the Landlord breached the *Regulation* and that they suffered a loss. However, the Tenant was unable to prove the amount of their loss. As I stated earlier, 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. The Tenant submitted estimates for brand new items. Based on the Tenant's own testimony, many of the 17 items sought were either purchased second-hand or were owned by the Tenant for a long time. I was not provided with the value of the Tenant's items at the time of their disposal and the Tenant could not testify to their age or to their depreciated values.

Ultimately, however, the Tenant has proven they suffered a loss based on the Landlord's breach. Policy Guideline 16 provides the following guidance in circumstances such as this (underlining is mine for emphasis):

An arbitrator may award monetary compensation only as permitted by the *Act* or common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

After reviewing the Tenant’s monetary order worksheet, the list of disposed items, the tenant’s pictures, and the estimates provided, I find it appropriate to award nominal damages in the amount of \$3,500.00. I have considered the high cost of a new billiards table, but the Tenant testified that they purchased their table second-hand, and, in any event, they were unable to tell me its age or the cost of a second-hand table.

Conclusion

The Tenant’s application for the return of double their security deposit is granted. The Tenant’s second application for compensation in relation to personal possessions disposed of by the Tenant is partially granted.

I grant the Tenant a Monetary Order in the amount of **\$5,325.21**, under the following terms:

Monetary Issue	Granted Amount
Double the security deposit, plus interest, pursuant to section 38 of the <i>Act</i> .	\$1,825.21
Plus: nominal damages for disposed items pursuant to section 67 of the <i>Act</i> .	\$3,500.00
Total Amount	\$5,325.21

The attached Monetary Order must be served to the Landlord as soon as possible. Should the Landlord fail to comply, the Monetary 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 *Residential Tenancy Act*.

Dated: April 22, 2024

Residential Tenancy Branch