



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the service address noted on the Application, on July 29, 2009. A Canada Post receipt was submitted that corroborates that the Tenant mailed a package on that date. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. The hearing commenced in the absence of the Landlord.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to compensation for personal property that was lost and/or damaged during the course of this tenancy, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

During the hearing the Tenant referred to photographs that he stated were submitted in evidence. I advised the Tenant that I had no photographs in evidence, nor did I have any indication that photographs had been received by the Residential Tenancy Branch. In an interim decision rendered on November 20, 2009, the Tenant was provided with the opportunity to re-submit the photographs that he allegedly submitted in support of this Application for Dispute Resolution on, or before, December 20, 2009. I received

those photographs on December 16, 2009 and considered the photographs prior to rendering a decision in this matter.

The Tenant stated that this tenancy began on October 01, 2008 and that he was required to pay \$1,100.00 per month. He stated that he paid \$550.00 in rent for December of 2008 and promised the Landlord that he would pay the remaining \$550.00 on December 15, 2008. He stated that he attempted to access his rental unit on December 11, 2008 and realized the Landlord had changed the locks to the rental unit, thereby denying him access.

The Tenant stated that he obtained an Order of Possession for the rental unit on December 24, 2008. He stated that he went to the rental unit with the RCMP on December 25, 2008 and on December 27, 2008 but he was unable to gain access because the locks had been changed. The Tenant advised that the Landlord obtained an Order of Possession on December 29, 2009 on the basis that the Tenant had not paid rent.

The Tenant stated that he never regained possession of the rental unit after December 11, 2008. He stated that most of his property was moved from the rental unit to the garage and that his vehicle was moved from the garage into the driveway on December 11, 2008. He stated that he was allowed access to the garage and the rental unit, for the purposes of removing his possessions, on February 07, 2009.

The Tenant is claiming compensation, in the amount of \$300.00, to replace a gecko that died because the Landlord moved it outside into the yard, where the gecko froze. The Tenant provided no evidence to establish the value of the gecko.

The Tenant is claiming compensation, in the amount of \$75.00, to replace a lizard tank. The Tenant stated that the tank was broken when it was thrown into the yard by the Landlord. The Tenant provided no evidence to establish the value of the tank.

The Tenant is claiming compensation, in the amount of \$200.00, to replace groceries that he left in the fridge and was unable to retrieve until February 07, 2009, at which time they were spoiled. In the documents submitted on December 16, 2009 the Tenant provided photographs of food in his fridge and cupboards that spoiled as a result of him being unable to access his rental unit. I note that a lot of the items in the photographs were non-perishables, such as canned items and condiments. The Tenant provided no evidence to establish the value of the food.

The Tenant is claiming compensation, in the amount of \$150.00, to replace a 38" Panasonic television that was missing from his rental unit and was not in the garage when he recovered his property on February 07, 2009. The Tenant submitted a letter from an individual who stated that he sold a 38" Panasonic television to the Tenant in August of 2008, for \$150.00.

The Tenant is claiming compensation, in the amount of \$200.00, to replace an Xbox game system with fifteen games that were missing from his rental unit and were not in the garage when he recovered his property on February 07, 2009. The Tenant submitted a letter from an individual who loaned the games and gaming system to him, who is asking the Tenant to pay him \$200.00 in compensation for his losses. In the documents submitted on December 16, 2009 the Tenant provided a document that appears to be an advertisement for a used Xbox system, which is being offered for sale for \$49.99 and a used Xbox game that is being advertised for sale for \$12.99.

The Tenant is claiming compensation, in the amount of \$50.00, to replace a 22" older model television that was missing from his rental unit and was not in the garage when he recovered his property on February 07, 2009. In the documents submitted on December 16, 2009 the Tenant provided a document that appears to be an advertisement for a used 32" television, which is being offered for sale for \$100.00.

The Tenant is claiming compensation, in the amount of \$300.00, to replace two beds that the Tenant contends were damaged by mice after they were placed in the garage. The Tenant submitted a letter from the Salvation Army that declares that he received two beds from the Salvation Army on October 21, 2008, and that the beds were valued at \$250.00. In the documents submitted on December 16, 2009 the Tenant provided a photograph of some of the property that was moved to the garage, including mattresses. The photographs indicate that the mice have damaged the mattresses.

The Tenant is claiming compensation, in the amount of \$199.00, to replace table with four matching chairs that the Tenant contends were moved to the garage but were not there when he recovered his property on February 07, 2009. In the documents submitted on December 16, 2009 the Tenant provided a photograph of some of the property that was moved to the garage, including a table and chairs. He also submitted an advertisement for a similar table and chair set, in the amount of \$199.00.

The Tenant is claiming compensation, in the amount of \$150.00, to replace a reclining chair that the Tenant contends was damaged by mice after it was placed in the garage. In the documents submitted on December 16, 2009 the Tenant provided a photograph of some of the property that was moved to the garage, including a chair. The Tenant provided no evidence to establish the value of the chair.

The Tenant is claiming compensation, in the amount of \$25.00, to replace six DVDs that the Tenant contends was damaged after being placed in the garage. In the documents submitted on December 16, 2009 the Tenant provided a photograph of a damaged DVD. The Tenant provided no evidence to establish the value of the movies.

The Tenant is claiming compensation, in the amount of \$300.00, to replace a variety of clothing that the Tenant contends was damaged after being placed in the garage. The Tenant provided no evidence to establish the value of the clothing.

The Tenant is claiming compensation, in the amount of \$5,000.00, to replace his hockey card collection that was missing from his rental unit and was not in the garage when he recovered his property on February 07, 2009. The Tenant submitted a lengthy list of hockey cards that he had collected over the years. He submitted a letter and receipt from a retailer that indicates the Tenant has recently purchased hockey cards, valued at \$1,610.00.

The Tenant is claiming compensation, in the amount of \$500.00, to replace a sofa and love seat that the Tenant contends were damaged by mice after they were placed in the garage. In the documents submitted on December 16, 2009 the Tenant provided a photograph of some of the property that was moved to the garage, including a sofa. The Tenant provided no evidence to establish the value of the items.

The Tenant is claiming compensation, in the amount of \$75.00, to replace a television stand that was missing from his rental unit and was not in the garage when he recovered his property on February 07, 2009. The Tenant provided no evidence to establish the value of the television stand.

The Tenant is claiming compensation, in the amount of \$2,800, to replace a Rolex watch that was missing from his rental unit and was not in the garage when he recovered his property on February 07, 2009. The Tenant provided an unsigned letter from his mother, in which the author declares that the Tenant and his brother were bequeathed a Green Crowned Rolex watch that is valued at \$2,800.00. In the documents submitted on December 16, 2009 the Tenant provided a document that appears to be an advertisement for a used Rolex watch, which is being offered for sale for \$5,490.00.

The Tenant is claiming compensation, in the amount of \$3,200, to replace a Polo Ralph Lauren watch that was missing from his rental unit and was not in the garage when he recovered his property on February 07, 2009. The Tenant provided an unsigned letter from his mother, in which the author declares that the Tenant and his brother were bequeathed a Polo Ralph Lauren watch that is valued at \$3,200.00.

The Tenant is claiming compensation, in the amount of \$360.00, to replace five watches that were missing from his rental unit and were not in the garage when he recovered his property on February 07, 2009. The Tenant provided no evidence to establish the value of the watches.

The Tenant is claiming compensation, in the amount of \$350.00, to replace two JVC speakers that were missing from his rental unit and were not in the garage when he recovered his property on February 07, 2009. The Tenant provided no evidence to establish the value of the speakers.

The Tenant is claiming compensation, in the amount of \$2,900.00, to replace fourteen sets of collectible Walt Disney pictures that were missing from his rental unit and were not in the garage when he recovered his property on February 07, 2009. The Tenant

provided an unsigned letter from his mother, in which the author declares that the Tenant has a collection of pictures that were valued at \$2,900.00. In the documents submitted on December 16, 2009 the Tenant provided photocopies of a variety of Walt Disney art, with an estimate of their value.

The Tenant is claiming compensation, in the amount of \$1,000.00, to repair damage caused to his vehicle when it was towed from the garage and left in the driveway. The Tenant stated that the vehicle had been partially restored and that the resulting bare metal had been exposed to the elements, causing it to rust; that mice infested the vehicle after it was moved from the garage; and that the sound system was stolen after the car was removed from the garage. In the documents submitted on December 16, 2009 the Tenant provided a number of photographs of the vehicle. He estimates that it will cost \$1,000.00 to repair the damage to the vehicle that resulted from it being left outside.

The Tenant is claiming compensation, in the amount of \$450.00, for food and rent that he paid to a friend after he was denied access to his rental unit. He acknowledged that he did not pay rent to the Landlord for December or a portion of November, however at a dispute resolution hearing on December 29, 2008 he was ordered to pay outstanding rent of \$460.00 for November of 2008 and \$1,100.00 for rent from December of 2008.

The Tenant is seeking compensation, in the amount of \$5,000.00, in aggravated damages. He contends that he is entitled to significant compensation because he was forced to sleep on a friend's couch, he was denied access to all of his personal belongings, and he lost his pet.

Analysis

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Landlord prevented the Tenant from accessing his rental unit while the Tenant had the right to occupy the rental unit, and that he removed property from the unit into an adjacent garage. I find that the Landlord's actions contravened section 26(3) of the *Act* and that the Landlord is obligated to compensate the Tenant for any losses the Tenant experienced as a result of the Landlord's non-compliance with the *Act*.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Landlord caused the death of the Tenant's gecko when he moved it outside. In addition to establishing that the Landlord killed the gecko, the Tenant must also accurately establish the cost of replacing the gecko. I find that the Tenant failed to establish the true cost of replacing the gecko. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Tenant's statement that it will cost \$300.00 to replace the gecko. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the gecko.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that some of the Tenant's groceries spoiled because he was denied access to this rental unit. I find that the Tenant failed to establish the true cost of replacing his groceries. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Tenant's statement that it will cost \$200.00 to replace the food. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the costs of replacing his food.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant's 38" Panasonic television disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the television would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I accept the letter written by the person who sold this used television to the Tenant as evidence that the television had a value of \$150.00, and I find that the Landlord must pay the Tenant \$150.00 to replace the missing television.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that an Xbox gaming system and fifteen games disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the items would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I accept the letter written by the person who owns this property as evidence that the items have a value of \$200.00, and I find that the Landlord must pay the Tenant \$200.00 to replace the items.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a 22" television disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the items would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that the Tenant submitted evidence that shows a slightly large used television would sell for \$100.00 and I find that this corroborates his statement that it will cost \$50.00 to replace the missing television, which is slightly smaller. On this basis, I find that the Landlord must pay the Tenant \$50.00 to replace the television.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that two beds were damaged after being moved to the garage by the

Landlord. I accept the letter written by the Salvation Army as evidence that the beds have a value of \$250.00, and I find that the Landlord must pay the Tenant \$250.00 to replace the beds.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a set of table and chairs disappeared from the garage after they were moved there by the Landlord. I find, on the balance of probabilities, that the items would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that the advertisement on a similar table/chair set is enough to cause me to conclude that it will cost \$199.00 to replace the furniture. On this basis, I find that the Landlord must pay the Tenant \$199.00 to replace these items.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a reclining chair was damaged after being moved to the garage by the Landlord. I find that the Tenant submitted no evidence that corroborates his statement that it will cost \$150.00 to replace the chair. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the cost of replacing the chair.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that six DVDs were damaged after being moved to the garage by the Landlord. I find that the Tenant submitted no evidence that corroborates his statement that it will cost \$25.00 to replace the movies. As the amount of the actual loss has not been proven, I dismiss the Tenant's claim for compensation for the costs of replacing the DVDs.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that some clothing was damaged after being moved to the garage by the Landlord. I find that the Tenant submitted no evidence that corroborates his statement that it will cost \$300.00 to replace his damaged clothing. As the amount of the actual loss has not been proven, I dismiss the Tenant's claim for compensation for replacing the clothing.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant hockey card collection disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the items would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I accept the letter written by the retailer who sold cards to the Tenant as evidence that the collection was worth at least \$1,610.00, and I find that the Landlord must pay the Tenant that amount.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a sofa and love seat were damaged after being moved to the garage by the Landlord. I find that the Tenant submitted no evidence that corroborates his statement that it will cost \$500.00 to replace these items. As the amount of the actual loss has not been proven, I dismiss the Tenant's claim for replacing the furniture.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a television stand disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the stand would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that the Tenant submitted no evidence that corroborates his statement that it will cost \$75.00 to replace the television stand. As the amount of the actual loss has not been proven, I dismiss the Tenant's claim for compensation for replacing the television stand.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a Rolex watch disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the watch would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that I cannot accept an unsigned letter as evidence of the value of the Rolex watch. I find that I also cannot accept the advertisement for the sale of a used Rolex watch as evidence of the value of the missing watch, as I have no evidence that the watch in the advertisement is of the same quality as the missing watch. Before awarding compensation for valuable jewellery, I find that I would need an evaluation from a qualified professional who has viewed the missing watch, given the wide fluctuation in the value of used watches and jewellery. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the Rolex watch.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a Ralph Lauren watch disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the watch would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that I cannot accept an unsigned letter as evidence of the value of this watch. I therefore find that the Tenant submitted no evidence that corroborates his statement that the Ralph Lauren watch has a value of \$3,200.00. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the Ralph Lauren watch.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that five watches disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the watches would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that the Tenant submitted no evidence that corroborates his statement that the watches are valued at \$360.00. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the miscellaneous watches.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that two speakers disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the speakers would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that the Tenant submitted no evidence that corroborates his statement that the

speakers are valued at \$350.00. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the speakers.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that a collection of Walt Disney pictures disappeared after the Landlord moved property from the rental unit. I find, on the balance of probabilities, that the pictures would not have disappeared if the Landlord had not moved the Tenant's property from the rental unit. I find that I cannot accept an unsigned letter as evidence of the value of the pictures. I find that I also cannot accept the photocopies of a variety of Walt Disney art, with their estimated value, as evidence of the value of the missing watch, as I have insufficient evidence to conclude that the missing pictures are of the same quality as the missing watch. Before awarding compensation for valuable art, I find that I would need an evaluation from a qualified professional who has viewed the art and ascertained its value. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the pictures.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant's vehicle was damaged when it was towed from the garage by the Landlord and left in the elements. I find that the Tenant submitted no evidence that corroborates his statement that it will cost \$1,000.00 to repair the damage to his vehicle. As the amount of the actual loss has not been proven, I dismiss the Tenant's application for compensation for the damage to his vehicle.

I dismiss the Tenant's application for compensation for the costs of food that he paid while living away from the rental unit, as I find that these were costs that he would have incurred even if the Landlord had not restricted his access to the rental unit.

I find that the Tenant has been ordered to pay rent for the month of December but that he was unable to access the rental unit after December 11, 2008. As the Tenant was unable to reside in the rental unit for the full month of December, I accept that he had to pay rent to reside somewhere else. If requested I would have awarded the Tenant compensation for living elsewhere in an amount up to \$709.60, which is the equivalent of twenty days rent. In these circumstances, however, the Tenant only requested compensation for rent that he paid to live elsewhere in the amount of \$450.00, and I find that he is entitled to compensation in that amount.

I find that the Tenant is entitled to aggravated damages in the amount of \$1,100.00, which is the equivalent of one month's rent. I find that the actions of the Landlord represented a flagrant disregard for the *Act* and that his actions resulted in significant hardship for the Tenant, as he was displaced and he lost a pet that was very important to him.

Conclusion

The Tenant has established a monetary claim in the amount of \$4,009.00, which is comprised of \$450.00 in living expenses that were related to being locked out of his rental unit; \$2,459.00 in damages to his personal property; and \$1,100.00 in aggravated damages.

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: December 23, 2009.

Dispute Resolution Officer