Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for $2,500 representing two times the amount of the security deposit, pursuant to sections 38 and 65 of the Act;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,000 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:09 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.
The tenant testified he served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on March 30, 2020. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. He mailed it the address for service on the tenancy agreement, and to a PO Box that the landlord provided as its address for service at a prior hearing between the parties. I find that the landlord was deemed served with this package on April 5, 2020, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order of $3,500;
2) an order that the landlord return the tenant's personal property; and
3) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting October 1, 2018 and ending October 1, 2019. Monthly rent was $2,500 and is payable on the first of each month. The tenant paid the landlord a security deposit of $1,250.

The tenant testified that the parties had agreed to mutually end the tenancy effective February 28, 2019, and that the parties would conduct a move-out inspection on that evening. He testified that he had mostly moved his possession out of the rental unit by February 28, 2019, but that a crib, sofa, and eight to ten place-settings of dishes (collectively, the "**Personal Property**"). He testified that he intended to remove these items (with the help of a friend) during the move-out inspection.

The tenant testified that the landlord did not attend at the agreed-to time for the move out inspection. He testified that he left the Personal Property in the rental unit. I am unsure why he did not remove the items that night.

The tenant testified that he returned to the rental unit on March 7, 2020 to retrieve the Personal Property, but that the key fob to gain access to the residential property did not work. The tenant was unable to remove the Personal Property from the rental unit.

The tenant attempted to contact the landlord on several occasions by telephone to request access to the rental unit and retrieve the Personal Property. The landlord did not respond.

The tenant testified that, on April 17, 2019, he wrote the landlord and provided his forwarding address to the landlord and requested the return of his security deposit. He did not say how this letter was delivered. The tenant testified that the landlord responded and asked for further contact information. The tenant provided it and testified that he expected to receive his deposit back. Instead, however, the landlord served him with an application for dispute resolution, which was filed on May 7, 2019 (the "**Prior Application**").

The Prior Application came to a hearing on August 16, 2019 and dealt a claim of the landlord for unpaid rent, utilities, and compensation for cleaning & lost key fobs. The presiding arbitrator issued a decision on August 27, 2019 (the "**Prior Decision**"), in which she wrote:

> The Landlord states that the Tenant's forwarding address was provided in a letter dated April 17, 2019 and received by the Landlord on May 9, 2019.
> […]
> The Landlord states that the Tenant left furniture behind and in its application claims an estimated $250.00 for the strata move-out fee and an estimated $100.00 for the costs of its disposal.
> […]
> It is undisputed that the Tenant left belongings in the unit into March 2019. For this reason, I consider that the Tenant had not vacated the unit as of March 1, 2019.
> […]
> [I] find on a balance of probabilities that the Landlord changed the locks and that the tenancy ended due to the Landlord's actions by March 7, 2019 when the Tenant no longer had access to the unit.

The presiding arbitrator found that the landlord was entitled to a monetary order of $1,004.48 (*pro rata* rent for 6 days of occupation in March 2020, and for unpaid utilities). She ordered that the landlord could deduct this amount from the security deposit and ordered that the landlord return the balance ($245.52) to the tenant.

The tenant testified that the landlord has failed to return this amount to him.

The tenant testified that the value of the Personal Property is $1,000. The tenant sought the return of these items or a monetary order equal to their value.

The tenant submitted a handwritten receipt dated June 6, 2018 for a baby crib and sofa costing $800. The tenant testified that these were purchased second-hand, and that they should not have depreciated significantly in value.

The tenant testified that he purchased 8 to 10 place-settings of dishes prior to moving into the rental unit. He testified he paid cash for them and did not receive a receipt. He stated that their depreciated value now is probably $100.

At the hearing, the tenant stated that he disagreed with the Prior Decision and asked that I set it aside. I advised him that I have no authority under the Act to set aside the Prior Decision and directed him to the Residential Tenancy Branch information line to ask about how to set aside a decision.

Analysis

1. Tenant's Personal Property

I accept the tenant's undisputed testimony that he left a crib, sofa, and 8 to 10 place setting of dishes in the rental unit after he vacated. I accept his testimony that he

requested access to the rental unit to receive these items on several occasions following March 8, 2019, but that the landlord never responded.

Based on the findings made in the Prior Decision, I find that the landlord has disposed of the Personal Property. I am not sure when this was done.

The *Residential Tenancy Regulations* (the "**Regulations**") sets out the procedure that is to be followed in these circumstances:

> **Abandonment of personal property**
>
> **24**(1)A landlord may consider that a tenant has abandoned personal property if
>
> (a)the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
>
> […]
>
> (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

As such, I find that the Personal Property was abandoned within the meaning of the Act.

Section 25 sets out what a landlord must do with abandoned property.

> **Landlord's obligations**
>
> **25** (1) The landlord must
>
> (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
>
> (b) keep a written inventory of the property,
>
> (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
>
> (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
>
> (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
>
> (a) the property has a total market value of less than $500,
>
> (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
>
> (c) the storage of the property would be unsanitary or unsafe.
>
> (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Based on the evidence of the tenant, I find that the value of the Personal Property exceeds $500. As the landlord did not attend the hearing, I cannot say what they reasonably believed the value of these items to be.

Similarly, as the landlord did not attend this hearing, I cannot say if the cost of storing these items would be more than the proceeds of their sale, or if it would have been unsafe or unsanitary to store these items. As such, I find that section 25(2) of the Regulations does not apply. According, the landlord must comply with section 25(1), and store the Personal Property for at least 60 days from their removal from the rental unit.

Section 26 of the Regulations allows for a tenant to reclaim abandoned property.

> **Tenant's claim for abandoned property**
>
> **26**(1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 *[disposal of personal property]*, the landlord may, before returning the property, require the tenant to
>
> (a) reimburse the landlord for his or her reasonable costs of
>
> (i) removing and storing the property, and
>
> (ii) a search required to comply with section 27 *[notice of disposition]*, and
>
> (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
>
> (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

If a tenant does not claim his abandoned property, the landlord may dispose of it in “a commercially reasonable manner” pursuant to section 29 of the Act, but nor before publishing a notice of the disposition in a local newspaper, per section 27(2)(b).

I have no evidence before me that the landlord disposed of the Personal Property in a commercial reasonable manner, or that he stored it for 60 days after having it removed from the rental unit.

Based on the contents of the Prior Decision, I understand the landlords to have hired someone to dispose of the Personal Property directly from the rental unit.

I find that the landlord breached their obligations under the Regulations, as set out above. Accordingly, pursuant to section 7 of the Act, the tenant is entitled to compensation resulting from this breach.

I find that by not responding to the tenant’s repeated requests to retrieve the Personal Property, by not storing the Personal Property for 60 days, and by not giving proper notice of the Personal Property’s disposal, the landlord caused damage to the tenant in

an amount equal to the value of the Personal Property. I find that the combined value of the sofa and crib is $800, based on the receipt provided by the tenant. I accept the tenant's testimony that the depreciated value of the dishes is $100, rather than the $200 claimed. As such, I order that the landlord pay the tenant $900.

As the Personal Property has been disposed of, I cannot order its return. Accordingly, I dismiss this portion of the tenant's claim.

2. Security Deposit

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the Prior Decision, I find that the tenancy ended on March 7, 2019 and that the tenant provided his forwarding address in writing to the landlord on April 17, 2019, and that it was received by the landlord on May 9, 2019.

Per the Prior Decision, the landlord made the Prior Application on May 7, 2019, two days prior to receiving the forwarding address. This is contrary to the tenant's testimony that it was only after receiving his letter containing the forwarding address that the landlord took steps to claim against the security deposit.

As I have found that the landlord received the tenant's forwarding address on May 9, 2020, and as the landlord filed the Prior Application on May 7, 2020, I find that the landlord has complied with section 38(1).

The basis for the relief sought by the tenant in this application (doubling of the security deposit) is section 38(6) of the Act, which sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlord has complied with section 38(1), this section is not applicable. Accordingly, the tenant is not entitled to the return of double the security deposit. I dismiss this portion of the tenant's claim.

As the landlord was permitted to retain $1,004.48 of the security deposit pursuant to the Prior Decision, and as the presiding arbitrator ordered the landlord pay the tenant $245.52 (representing the return of the balance of the security deposit), I make no further monetary order regarding the security deposit.

While I accept the tenant's testimony that the landlord has yet to return the balance of the security deposit to him, as ordered in the Prior Decision, I note that the presiding arbitrator attached a monetary order for $245.52 to the Prior Decision. That order remains enforceable in the Provincial Court (Small Claims) of British Columbia. It is not necessary for me to issue any further order regarding that amount.

3. Filing Fee

Pursuant to section 72(1) of the Act, as the tenant has been partially successful in the application, he may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenant $1,000, representing the following:

Value of Personal Property	$900
Filing Fee	$100
Total	**$1,000**

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: July 20, 2020

Residential Tenancy Branch