Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BALMORAL PARK APTS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 03, 2020 (the "Application"). The Tenant applied as follows:

- For compensation for monetary loss or other money owed;
- For return of the security deposit; and
- For reimbursement for the filing fee.

The Tenant and Agents for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties confirmed the correct rental unit address which is reflected on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agents confirmed receipt of the hearing package and Tenant's evidence.

The Tenant testified that they did not receive the Landlord's evidence.

The Agents testified that the Landlord's evidence was served on the Tenant by registered mail to the address on the Notice of Dispute Resolution Proceeding. The Tenant confirmed they are still at this address. The Agents provided Tracking Number 1. The Landlord also submitted a receipt with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package

was sent January 08, 2021 and delivered to a community mailbox, parcel locker or apt./condo mailbox on January 11, 2021.

The Tenant testified that they had checked their mail a week prior to the hearing and had not received the package.

The Landlord was required to serve their evidence in accordance with section 88 of the *Residential Tenancy Act* (the "*Act*"). I am satisfied based on the testimony of the Agents, receipt, Tracking Number 1 and Canada Post website information that the Landlord served their evidence on the Tenant in accordance with section 88(c) of the *Act* which states:

> 88 All documents, other than those referred to in section 89…that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways…
>
> > (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord…

Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Landlord's evidence January 13, 2021.

The deeming provisions in section 90 of the *Act* can be rebutted as is clear from the following at page 12 of Policy Guideline 12:

> The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done. **For example**, the Supreme Court found in Hughes v. Pavlovic, 2011 BCSC 990 that the deeming provisions ought not to apply in that case because Canada Post was on strike, therefore **unable to deliver** Registered Mail.
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> **A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received.** For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

> The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation13 is a decision for the arbitrator to make on the basis of all the evidence before them.
>
> (emphasis added)

Here, the Landlord was not required to serve their evidence by registered mail, they were permitted to serve their evidence by regular mail. The Landlord has provided sufficient evidence showing their evidence was mailed to the Tenant. The Canada Post website information shows the package was delivered. In these circumstances, I am not satisfied the Tenant's verbal testimony that they did not receive the package alone is sufficient to rebut the deeming provision of section 90(a) of the *Act*. I do not find the Tenant's verbal testimony sufficient in the absence of some evidence to support it. The Tenant did not point to any evidence to support their verbal testimony that they did not receive the Landlord's evidence.

In the circumstances, I find the evidence of service provided by the Landlord outweighs the verbal testimony of the Tenant and I am satisfied the Tenant is deemed to have received the Landlord's evidence January 13, 2021. I am satisfied the Landlord complied with rule 3.15 of the Rules of Procedure (the "Rules") in relation to the timing of service. The Landlord's evidence is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

2. Is the Tenant entitled to return of the security deposit?

3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought the following compensation:

- $21,016.10 for loss of belongings;
- $2,349.92 to replace belongings;
- $1,641.00 for April rent; and
- $100.00 for the filing fee.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2018 and was a month-to-month tenancy.

The parties agreed the tenancy ended April 29, 2020.

The Tenant had not provided the Landlord a forwarding address in writing separately from the Application.

The Application states as follows in relation to the request for compensation for belongings:

> Landlord junked my entire apartment, despite me trying to cancel a vacate order, that he insisted in because I wasn't at my apartment. When I tried to cancel it, before the end of the month, the landlord refused, saying another tenant had already signed a lease and forced me out. I agreed, because he said I couldn't come back. I don't know how he could show anyone my apartment without junking everything because it was messy, I think he threw out my stuff before the end of the month.

The Tenant sought compensation on the basis that the Landlord got rid of their belongings in the rental unit. The Tenant testified about being unsure whether they were going to continue the tenancy and the Landlord telling them they had to sign a vacate order saying they must vacate immediately. The Tenant testified that three weeks later, the Tenant told the Landlord they wanted to cancel the vacate order and the Landlord would not let them. The Tenant submitted that they had to buy all their belongings again because the Landlord got rid of their belongings from the rental unit.

The Agents for the Landlord testified as follows. The Tenant ended the tenancy over email and signed a notice to vacate ending the tenancy at the end of April. The Landlord found a new tenant for the rental unit. Three weeks later, the Tenant said they

did not want to move out by the end of April. The Landlord told the Tenant they could not cancel the notice to vacate because the Landlord had found another tenant for the rental unit. The Tenant could not come back to the rental unit to remove their belongings and agreed to have the Landlord hire a junk removal company to attend and remove the belongings. The Tenant agreed to pay for the junk removal. The Tenant agreed the Landlord could have everything removed from the rental unit. The Landlord did have the Tenant's belongings removed from the rental unit, but this was because the Tenant agreed to this.

In reply, the Tenant testified as follows. The Agents' testimony is a lie. They tried their best to get back to the rental unit in April. They told the Landlord they could come back to the rental unit and asked that the Landlord not have anyone remove their belongings. Everything in the rental unit was already gone when they tried to go back to the rental unit three weeks after signing the notice to vacate.

In reply, the Agents testified that the Tenant's items were removed on the last day of April and that the Tenant had every opportunity to come back and collect their belongings.

The Tenant sought rent for April and alleged that the Landlord entered the rental unit without permission and took the Tenant's April rent cheque and that they should be reimbursed for April rent because of this.

The Agents denied that anyone for the Landlord entered the rental unit without permission and took the Tenant's April rent cheque.

The Tenant submitted the following evidence:

- An outline of costs for belongings;
- Receipts;
- A "Shopping list" of household items;
- Orders for furniture; and
- A Monetary Order Worksheet.

The Landlord submitted the following relevant evidence:

- A Resident Notice to Vacate dated April 06, 2020 signed by the Tenant stating that the Tenant is giving notice to vacate the rental unit by the end of April 2020. This is signed by the Landlord's Manager.

- An invoice for the removal of the Tenant's belongings which shows this occurred May 01, 2020.
- Email correspondence between the parties which includes the following:
    - An email from the Tenant to the Landlord April 07, 2020 stating, "So I had to leave because of an emergency situation. I cant [sic] return in time either, Can you just dump everything in my home? Whatever removal service you have, I'll pay the fee."
    - Email exchanges from April 08, 2020 in which the Tenant asks the Landlord if they can mail their belongings to them and the Landlord answers that they cannot. The Landlord stated, "We will have to call a junk removal company to take everything from the apartment in the next couple days."
    - The Tenant responded to the above stating, "Okay, then dont [sic] start the removal until last week of April then, April 27th to be exact. Yes and give me the cost estimates when you can!"
    - The Landlord replied stating they would schedule the junk removal for April 27th and would let the Tenant know the cost.
    - The Tenant emailed the Landlord April 13, 2020 asking that the junk removal be scheduled for the last day of the month.
    - The parties agreed the junk removal would be scheduled for the morning on the last day of the month in emails dated April 13, 2020.
    - The Tenant emailed the Landlord April 24, 2020 asking if it was possible to cancel the notice to vacate and junk removal and if the Tenant could stay for May.
    - The Landlord responded advising that the rental unit had already been rented to another tenant.
    - On April 27, 2020, the Tenant wrote, "I've found a solution. Mailing the keys tomorrow. Other pair will be inside, please send invoice of junk removal and cleaning costs."
    - On April 28, 2020, the Landlord wrote to the Tenant stating, "Are you coming back to your unit at all or we can schedule the junk removal for tomorrow? Please let me know."
    - On April 28, 2020, the Tenant replied, "Go ahead."
    - There was a further discussion between the parties about costs at the end of the tenancy. On May 19, 2020, the Tenant wrote, "Okay, so I agreed to junk removal…"
    - On May 19, 2020, there were further emails and the Tenant again wrote, "I did not sign off on anything but the junk removal."

- A video of the contents of the rental unit prior to the Tenant's belongings being removed.

Analysis

Return of security deposit

Section 38 of the *Act* sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy. Section 38(1) states:

> 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,
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> 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.

Section 39 of the *Act* states:

> 39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
>
> (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
>
> (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenant had not provided the Landlord with their forwarding address in writing and therefore section 38(1) of the *Act* had not been triggered. I note that providing an address on the Application is not sufficient to trigger section 38(1) of the *Act*.

Given the Tenant did not provide the Landlord with their forwarding address in writing prior to filing the Application, the request for return of the security deposit is premature. I dismiss the request for return of the security deposit with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

At the hearing, the Tenant's address on the Application was confirmed and this is noted on the front page of this decision. The Landlord was considered to have received the Tenant's forwarding address on the date of the hearing given the address was written on the Application and confirmed. If the Landlord does not deal with the security deposit in accordance with the *Act*, the Tenant can re-apply for return of the security deposit.

Compensation for belongings

Section 7 of the *Act* states:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claims.

I find the email correspondence between the parties directly contradicts the Tenant's position on the Application in relation to compensation for belongings and calls into question both the reliability and credibility of the Tenant's testimony. Further, the documentary evidence supports the testimony of the Agents for the Landlord. In the circumstances, I place more weight on the testimony of the Agents for the Landlord than on the testimony of the Tenant.

Based on the testimony of the Agents, email correspondence and Resident Notice to Vacate, I am satisfied the Tenant ended the tenancy on April 06, 2020 for the end of April of 2020.

Based on the testimony of the Agents, email correspondence and Resident Notice to Vacate, I am satisfied the Landlord accepted the Tenant's notice ending the tenancy for the end of April of 2020.

The Landlord was entitled to accept the Tenant's notice to vacate and to re-rent the rental unit for May. The Landlord had no obligation to allow the Tenant to cancel the notice to vacate. Nor was the Tenant permitted to unilaterally withdraw or cancel the notice to vacate (see Policy Guideline 11, page 1).

Based on the testimony of the Agents and email correspondence, I am satisfied the Tenant repeatedly asked the Landlord to have everything in the rental unit removed by junk removal and repeatedly agreed to the Landlord having everything in the rental unit removed by junk removal.

Based on the testimony of the Agents, email correspondence and invoice from the company that removed the Tenant's belongings, I am satisfied the belongings were removed May 01, 2020, after the date the parties had agreed to. I do not accept the Tenant's testimony that the Landlord had their belongings removed prior to the end of April as neither the email correspondence nor the junk removal invoice supports this and, in fact, both contradict this.

In the circumstances, I am satisfied the Tenant asked the Landlord to have their belongings removed from the rental unit and I am satisfied the Landlord simply did what the parties agreed to. I am not satisfied the Landlord breached the *Act*, *Residential Tenancy Regulation* or tenancy agreement. Nor am I satisfied the Tenant is entitled to any compensation given the Landlord simply did what the Tenant asked them to do and what the parties agreed to. The claim for compensation is dismissed without leave to re-apply.

April Rent

The Tenant sought reimbursement for April rent on the basis that the Landlord entered the rental unit without permission and took their April rent cheque. The Agents denied that the Landlord did this.

I find it unlikely that a landlord would enter a rental unit without permission and take a tenant's rent cheque. I would expect to see some evidence to support such an allegation. The Tenant has not provided any evidence to support their testimony on this point. I do not find the Tenant's testimony on this point alone sufficient to prove that the Landlord entered the rental unit without permission and took their April rent cheque. Further, I place more weight on the testimony of the Agents than on the testimony of the Tenant as I find that the Tenant's testimony in this matter is not reliable and not credible.

In the circumstances, I am not satisfied the Landlord entered the rental unit without permission and took the Tenant's April rent cheque. I am not satisfied the Landlord breached the *Act*, *Residential Tenancy Regulation* or tenancy agreement in this regard. I am not satisfied the Tenant is entitled to compensation. The claim for April rent is dismissed without leave to re-apply.

Filing Fee

Given the Tenant was not successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

Conclusion

The Tenant's request for return of the security deposit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

The remaining claims are dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 17, 2021

Residential Tenancy Branch