



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP MNDCT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application') In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy on August 1, 2019 and ended on January 31, 2022. Monthly rent was set at \$1,500.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$450.00, which the landlord still holds.

The tenant filed this application requesting an order for the landlord to return their personal property, and for a monetary order in the amount of \$1,843.53. The tenant provided a letter from the landlord dated February 28, 2022 which contained a list of charges, less the tenant's security deposit of \$450.00. The landlord requested that the tenant remit the balance of \$1,393.53 as soon as possible.

Both parties confirmed in the hearing that the tenant has not paid this amount, and that the landlord is still in possession of the tenant's security deposit.

The tenant also requested that the landlord return their personal property to them. The tenant alleges that the landlord had "trashed" their belongings. The landlord's agents in the hearing confirmed that they are no longer in possession of any personal property belonging to the tenant.

Analysis

I must first note that the tenant's evidence references human rights violations that took place during this tenancy. Although the *Residential Tenancy Act* does allow tenants to file an application in relation to disputes between landlords and tenants, matters that pertain to human rights violations and complaints, even within a tenancy setting, do not fall under the jurisdiction of the RTB. The British Columbia Human Rights Tribunal exists to hear these complaints, and I decline to make any findings in relation to any allegations of human rights violations that took place during this tenancy.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit. Neither party has filed an application under section 38(1) of the *Act*

that was scheduled to be heard before me. Accordingly, I make no findings on issue related to the return of the tenant's security deposit.

As noted above, the tenant must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenant's security deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the tenant may apply for the return of their deposit plus compensation for the landlord's failure to return their deposit.

I will now consider tenant's application for monetary compensation and request for an order for the return of their personal property.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, although the landlord had ordered that the tenant remit payment for several charges, at the time of the hearing, no payment had been made by the tenant towards these charges. I also note that the landlord has not filed any cross applications to be heard with the tenants in relation to these monetary claims. As it was confirmed that the tenant had yet to pay the amount requested, I find that the tenant has failed to establish any losses suffered in the amounts claimed. Accordingly, I dismiss the tenant's application for monetary compensation or money owed without leave to reapply. As the landlord has not filed a cross application in relation to these amounts, I make no findings on the merits of these charges.

As the landlord is not currently in possession of the tenant's property, I dismiss the tenant's application for the return of their personal property without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord confirmed that they are still in possession of the tenant's security deposit. Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's

forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit. If the landlord fails to comply with section 38 of the *Act*, the tenant may apply for the return of their deposit plus compensation for the landlord's failure to return their deposit.

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: November 27, 2022

Residential Tenancy Branch