



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes                      MNDC, RPP, O

### Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and other issues. During the course of the hearing the tenant withdrew his application for an Order for the landlord to return his personal property.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on March 04, 2011. The landlord was deemed to be served the hearing documents on March 09, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*. Both Parties confirmed they had received evidence from the other party. A substantial; amount of documentary evidence has been submitted by the parties and this evidence has been reviewed by me prior to and during the hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this tenancy started on July 01, 2004 and ended on January 05, 2010 after a 10 day Notice to End Tenancy was given to the tenant by the landlord for non payment of rent. Rent for this unit was \$1,340.00 due on the 1<sup>st</sup> of each month. A move in and a move out condition inspection was completed at the start and end of the tenancy.

The tenant testifies that he gave up possession of the property on January 05, 2010 and as he had to go into the hospital he states he telephoned the landlord and agreed he would leave the keys with his neighbours of the duplex in their mail box. He states the landlord therefore had possession of the keys but did not take possession of the property at that time. The tenant has provided an e-mail faxed to the landlord that states: "the tenant relinquishes full and complete possession to the above noted property to (the landlords) effective January 05, 2009 as is". (This date was later amended to 2010 as it was an error). The e-mail also states: "the personal effects within the property belong to ML and CM (new tenants) and will be relocated should they not assume a leasehold interest in this property by January 15, 2010". The e-mail also provided the tenants forwarding address. The tenant testifies that this e-mail meant his personal property would be relocated if the new tenants did not take possession and he would do that after he came out of hospital.

The tenant testifies he did sign a Bill Of Sale for his personal property to ML and CM but states this was only done as they were going to become the tenants and it was a way of protecting his property from the landlord removing it after his tenancy ended as he was going into hospital. The tenant states despite the Bill Of Sale saying he had sold his personal property to ML and CM for \$2,400.00 no money exchanged hands and some of the items on that bill of sale have been returned to him by ML and CM on February 01, 2010. For example, the flat screen television and audio system, the glass top table and chairs, a gas Bar-B-Que, computer equipment and printer, kitchen dishes, pots and pans, some clothing, several lamps and some pictures.

The tenant states the rest of the items reminded in the house and were there on January 15, 2010 as they are shown in the landlords' photographic evidence. The tenant states the items he seeks returned also include the items documented as being in the basement. However, the

tenant agrees these items were things he had lent to the neighbouring tenants who occupied this area of the property.

The tenant testifies that when he came out of hospital his intention was to retrieve his belongings and relocate them to his new house. He states he spoke to one of the new tenants CM who told him the landlord had only given her three days to remove the items and everything she wanted to keep had to be put into the garage. He states she told him this had put her in a position and meant she could not follow through on her promise to the tenant to return his belongings. The tenant states when he returned to the house on January 14, 2010 there was a truck and trailer parked full of his belongings he states he was unable to determine what items were on this truck and trailer but he did receive some bedding, a sleeping bag and items of clothing back from the truck driver AH. The tenant states the new tenants should have taken occupancy of the house from January 15, 2010 but did not sign a lease until January 17, 2010 with an effective move in date of February 01, 2010. The tenant states he did not tell the landlord he had sold his belongings and that these new tenants were only looking after them. The tenant states he does not know if the other tenants still have his belongings but states it was the landlords' responsibility to store his belongings in accordance to the Act and Regulations.

The tenant states the landlord has documented on the move out condition inspection that the unit has been abandoned with some personal belongings amounting close to nothing. The tenant states this was not the case, as his belongings had a substantially higher value of \$18,165.00 as claimed on his application. The tenant states when he returned to the property on January 14, 2010 he was able to briefly enter the property and found some of his belongings were still inside. He states when he attempted to retrieve some items the neighbours called the police and the police told him he was not allowed to be on the property.

The landlord testifies that the tenant told them he was leaving the unit on January 05, 2010 as he was going into rehab. The landlord states the tenant had been served with a 10 Day Notice to End Tenancy. The landlord states on that day the tenant handed her a bag with a Bill Of Sale in it, a list of repairs for the new tenants and other documentary items. The landlord testifies the tenant did not telephone her office and tell anyone that he was dropping the keys with the neighbours it was the tenants' neighbours who called the landlord to inform her that the tenant

had left the keys. When the landlord attended the property the neighbours showed them there copy of the Bill Of Sale which was the same as the one the tenant had given her.

The landlord testifies that the house was left in a dirty condition and they had to mitigate their loss in getting the unit re-rented quickly to the new tenants who had purchased the tenants furniture. The new tenants removed the furniture and stored it in the garage while the house was prepared for rent. The landlord testifies that she relied on the e-mail sent to her by the tenant stated that all the personal effects in the property belonged to the new tenants ML and CM. There was no other information about how the tenant would relocate any items and as far as the landlords were concerned the tenant had sold or given all his personal effects to the new tenants.

The landlord states she also acted in good faith on the information provided to her by the tenant that all his personal effects belonged to the new tenants as both parties had provided a bill of sale for a lot of the tenants personal effects. The landlord testifies that the remaining items removed from the house had little or no value and amounted to discarded furniture, clothing and garbage.

The landlord calls her witness AH who was the person contracted to remove the unwanted items from the house. The witness states he removed what the other tenants did not want to keep. He states he removed an old broken down couch, small cooking supplies, bedding and clothing, unrecoverable items, a desk, cardboard and papers, an old box spring and mattress, garbage, plastic bags and other small items of debris. He states all items had to be loaded and separated for the dump.

The witness states the tenant turned up and was very upset. He states the police arrived and spoke to the tenant and as he had the first load on his truck he helped the tenant remove some items such as bedding and clothing and helped put it into the tenants' car. AH states the items he removed from the house would have had little value; at most, collectively, it may have been worth less than \$300.00.

The tenant declines to cross exam this witness.

The landlord states the tenant argues that the new tenants should have moved in by January 15, 2010 then he would have been able to recover his belongings however the landlord states the new tenants could not move in due to the condition the tenant had left the property in. The landlord testifies that at a previous hearing held on June 24, 2010 the tenant did not raise the matter of his personal effects then. The landlord states she took an inventory of the items left in the property which the new tenants did not want and this has been included in evidence. The landlord questions the photographs provided in the tenants' evidence showing items of furniture and appliances. The landlords state these photographs are undated and do not determine what was in the unit at the end of the tenancy as the blue couch shown in the photographs looks in good condition however this was the old and broken couch taken away by AH.

Both parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of the actions or neglect of the respondent in violation of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

It is my decision that the landlords acted on the information given to them by the tenant and the new tenants regarding ownership of the personal belongings. If the tenant had a different arrangement with the new tenants that they would return his belongings after he came out of hospital then he should have informed the landlord of this arrangement. However, the tenant failed to do this and the landlord acted in good faith in allowing the new tenants ML and CM to keep the tenants belongings. When a landlord receives an e-mail stating all personal effects within the property belong to ML and CM and will be relocated should they not assume a leasehold interest in this property by January 15, 2010. This does not inform the landlord that

the right of ownership of these personal effects will revert back to the tenant and not that the new tenants ML and CM will relocate the personal effects.

The tenant argues that the new tenants did return some of his belongings mentioned on the Bill Of Sale on February 01, 2010. However, I find this was an agreement between the tenants and not something the landlord was party to or had knowledge of.

Therefore, I find the landlords did act in good faith on the information received from the tenant and any items left at the property belonged to the incoming tenants and was dealt with accordingly. I further find that the tenant has no knowledge of what items were removed by the landlords' contractor to the dump and what items were kept by the tenants. Therefore, I find from the testimony given at the hearing today that the items removed had a value of less than \$500.00 and were removed in accordance with s. 25 (2) of the Residential Tenancy Regulations. Consequently, I find the landlords were not negligent in this matter, the tenant did not mitigate his loss with regard to his personal belongings and the tenant has not met the burden of proof. Therefore, the tenants' application for \$18,165.00 is dismissed.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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 18, 2011.

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Residential Tenancy Branch