



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants' application for a Monetary Order for Money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. This hearing was originally scheduled for October 13, 2011 but was adjourned to allow the parties to provide more evidence to support their testimony. The hearing was reconvened on this date.

The tenants agent who is representing the tenant from the office of the Public Guardian and Trustee of British Columbia and the landlord attended the conference call hearing. Both parties gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant's agent provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### 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 month to month tenancy started on September 01, 1979. This tenancy ended on September 30, 2010 when the tenant came under the care of the Mental Health Authorities and later the Public Guardian and Trustee Office.

The agent for the tenant testifies the landlord denied the tenant access to retrieve her stove and fridge from the unit or the landlords' storage after the end of the tenancy. The agent for the tenants testifies that she sent the landlords property manager, in place at that time, a fax asking for arrangements to be made to pick up these appliances. The agent for the tenant gave her phone number for the property manager to call her to make the necessary arraignments. This fax was sent on October 26, 2010.

The agent for the tenant testifies she received a communication back from the property manager which states, in part:

*To meet your request regarding Ms E's abandoned appliances, storage and retrieval charges will apply. Given Ms E's is in arrears with the company and given the course of events that led to dealing with Ms E's belongings, our company will not be making an effort to return these items at this time. Should an arbitrator from the Residential Tenancy Branch arrive at a decision in your favour, appliance storage and retrieval costs remain your client's responsibility. In this case an arbitrator will be consulted as to what those charges will reasonably be.*

*Our company appreciates your efforts in dealing with this case and would welcome a settlement in the amount of \$1,000.00 in which case our company would forgo the storage and retrieval costs for appliances. Those individuals that received the benefit of Ms E's abandoned appliances at no cost reside in the complex and I am sure they would understand the circumstances given the opportunity to explain it to them, which I am prepared to do.*

The agent for the tenant testifies that the fridge was purchased new on June 30, 2010 for \$499.95 plus delivery and tax to a total sum of \$638.35(receipt provided). The stove was an older model and the agent for the tenant has researched its value and estimates it to be worth approximately \$50.00. The agent for the tenant seeks to recover these sums from the landlord as he did not comply with s. 25 of the Residential Tenancy Regulations and store the tenant's belongings for a minimum of 60 days.

The landlord disputes the tenants claim. He states the Interior Health representative handling the tenant's affairs at that time told the property manager to dispose of the tenant's belongings. The landlord testifies that these items were disposed of within approximately five days from the end of the tenancy as the unit had to be ready for new tenants to move in. The landlord claims these appliances were given to another tenant in need. The landlord testifies that when the tenants healthcare worker told his property manager to dispose of the tenants belongings she did not isolate the appliances to avoid them being disposed of.

The landlord testifies that the fridge and stove were left in a dirty condition which would have devalued them and he has no knowledge as to whether or not these appliances were in working order. The landlord agrees these appliances were not stored for the tenant for 60 days.

The agent for the tenant has provided an e-mail sent by the healthcare worker who was assisting the tenant when she moved out. This e-mail states that the health care worker did not recall giving specific instructions to the landlord regarding disposal of the fridge and stove. The health care worker states in her e-mail that the landlords' calls to her were in regard to the items left in the basement and wanting to know who was going to pay for the clean-up of the home. The healthcare worker also states in this e-mail that the appliances were in good working order when the home was vacated.

The landlord questions the healthcare workers knowledge that these appliances were in good working order and questions did she inspect the appliances to determine this.

The agent for the tenant testifies that the healthcare worker was involved with the tenants care and assisted the tenant with her daily life so would have been aware that these appliances were in good working order.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the Parties to s. 25 of the Residential Tenancy Regulations which provides for the landlords' obligations for any belongings a landlord deems are abandoned by a tenant

**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.

The landlord argues that they were given permission to dispose of these appliances however the landlord has provided no evidence to support this; the landlord argues that the fridge and stove were left dirty and may or may not have been in good working order and therefore the value of the appliances would be under \$500.00 and may not have been sanitary to store them. However the landlord has provided no evidence to support this; and the landlord agrees that the appliances in question were given away to another tenant in need within five days of the end of the tenancy.

The agent for the tenant has provided sufficient evidence to support their claim that the healthcare worker did not give permission for the disposal of the appliances but only for the tenants belongings in the basement and sufficient evidence to show that the agent for the tenant did request to have these appliances returned within one month of the end of the tenancy but this request was denied by the landlords property manager who informed them that the appliances had been given to another tenant and the tenant would have to apply for arbitration in order to retrieve her appliances and then pay storage and retrieval fees when no storage had actually been provided.

Consequently, I find the landlord has not complied with s. 25 of the Residential Tenancy Regulations regarding storage of the tenants belongings and as such I uphold the tenants application for a Monetary Order concerning the costs of these appliances.

As the fridge was only three months old at the end of the tenancy I deem that no significant depreciation would have taken place therefore the tenant is entitled to recover the costs paid for the fridge including tax but minus the delivery costs. I further find the cost of \$50.00 claimed for the stove is a reasonable amount to claim for an older model stove. The tenant is therefore entitled to a Monetary Order of **\$568.35** for the fridge and **\$50.00** for the stove.

As the tenant has been largely successful with her claim, I find she is also entitled to recover the **\$50.00** filing fee paid for this application.

Conclusion

I HEREBY FIND largely in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$668.35**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court

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 16, 2011.

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Residential Tenancy Branch