



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC RPP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement or the return of her personal property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Landlord breached the Act, regulation or tenancy agreement?
2. Does the Landlord have the Tenant's possessions?
3. If not, has the Tenant met the burden of proof to obtain Monetary Compensation as a result of that breach, pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant and her Advocate confirmed receipt of the Landlord's evidence by e-mail and argued that it was sent to them late, four business days instead of five prior to the hearing and in a manner that was not provided for in the Act as they were sent by e-mail; and therefore should not be considered for this proceeding. The Advocate confirmed that she was able to open the e-mail attachment and was able to print the documents okay and responded to them May 7, 2012 three days prior to the hearing.

The following facts are not in dispute:

- The parties entered into a month to month tenancy that began on January 11, 2011; and
- Rent is payable in advance on the first of the month in the amount of \$375.00; and
- The Tenant paid \$187.50 on or before January 11, 2011 as the security deposit; and
- When the Tenant arrived to move into the unit the Landlord required that she store her rug and some of her clothing in the basement prior to the Landlord

arranging to have them cleaned and fumigated for bedbugs; which was to be completed by early February 2011.

The Tenant affirmed that she initially dealt with a female employee of the Landlord to have her possessions returned and it was later acknowledged that her rug and clothing had been lost or stolen as they could not be located. She confirmed that they have attempted to settle this matter however the Landlord is only offering \$500.00 as compensation when she is of the opinion that she is entitled to \$2,400.00.

The Tenant acknowledges being compensated previously for her lost magnetic pillows and is now seeking the compensation for a "couple of bags of clothing" and her Persian rug. Her rug was 10' x 12' and was purchased privately for \$1,500.00. The Tenant stated she does not have the receipt, does not have an appraisal of the rug, and did not have insurance on it. She is of the opinion that it appreciates with time and based on their evidence the rug would be worth about \$2,000.00. She has attributed \$400.00 to the value of her clothing.

The Landlord is of the opinion that the rug would hold a value of no more than \$500.00 as based on their research which is supported by their evidence of on-line advertisements. The Landlord who appeared at the hearing stated he was not aware of clothing that had gone missing and advised that the lifestyle of their tenants is such that they are constantly giving and selling their possessions between themselves so it is impossible to keep track of who gave or sold what to the other tenant. In this case he noted how the Tenant had a garage sale and still has offsite storage for a lot of her possessions so it would be impossible for the Landlord to track everything.

### Analysis

I have carefully considered the aforementioned and all of the documentary evidence. In doing so, I considered the Tenant's request not to consider the Landlord's evidence because of the method in which it was served (e-mail) and the date it was received. I considered that the application for dispute resolution was not filed until April 20, 2012, and the hearing was scheduled for May 10, 2012, that the Advocate had no problems accessing the evidence, received it four days prior to the hearing, and was able to respond to it three days prior to the hearing. Therefore I have considered the Landlord's documentary evidence in making my decision, pursuant to rule 11.5 of the *Residential Tenancy Branch Rules of Procedure*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and

3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case, I find the Tenant has met the burden of proof to establish she suffered a loss of her rug and a couple of bags of clothing as a result of the Landlord's lack of duty of care of her possessions. What is in dispute is the value of the loss and in the absence of proof of the age of the articles, the actual price paid for the articles, and the actual condition of the articles at the time they were placed in the Landlord's care, I find the value of the loss to be unproven.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenant has the burden to prove the value of her loss. Accordingly, the only evidence before me was disputed values as supported by various advertisements provided by both parties. Accordingly I find the disputed evidence insufficient to meet the Tenant's burden of proof.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where the value of a loss cannot be proven and are an affirmation that there has been an infraction of a legal right. In this case, I find that the Tenant is entitled to nominal damages in the amount of **\$650.00** which consists of \$500.00 for the value of the rug plus \$150.00 for the value of the lost clothing.

### Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$650.00**. This Order is legally binding and must be served upon the Landlord.

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: May 11, 2012.

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Residential Tenancy Branch