



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, MNSD, RPP

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and an order to have the landlord return personal possessions.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing, as both parties had submitted evidence late for this proceeding I reviewed with each of the parties their evidence, how and when they served it and when it was received by the other party.

The tenant's evidence was served and received as follows:

Description	Served	Received by Landlord
Tenancy Agreement and Tool Receipts	April 14, 2012	April 14, 2012
Letter from Health Authority	May 10, 2012	May 11, 2012
Two letters - Electrician and Probation Officer	May 28, 2012	May 28, 2012
Hand-written Calculations	May 30, 2012	May 30, 2012
Provincial Court Documents	May 31, 2012	May 31, 2012

The landlord's evidence was served and received as follows:

Description	Served	Received by Tenant
Submission on tenant's late evidence	June 1, 2012	Not received

The landlord testified that she had evidence for the tenant and intended to serve it to him in court on May 15, 2012. However an agreement was made between the landlord and the tenant's mental health worker, in the presence of the tenant, that she could serve it to the mental health worker's office that same day. The landlord testified she served it as per their agreement on May 15, 2012.

The tenant testified that he had served his late evidence so late because he had not received the landlord's evidence until May 31, 2012. The tenant's witness testified that

the package was received at least two weeks prior to the hearing and he believes the tenant did not pick it up until late last week.

Residential Tenancy Branch Rule of Procedure 3.5 requires that all evidence that was not available to be filed with the application but which the applicant intends to rely upon must be served on the respondent at least five days prior to the hearing. Similarly Rule 4.1 requires the respondent to file any evidence she intends to rely upon at least five days prior to the hearing.

The phrase “at least” excludes the day the Residential Tenancy Branch receives the evidence; the day of the hearing; and any weekend days or statutory holidays in between. As such, the latest evidence could have been served by both the applicant and respondent was May 25, 2012.

Based on the testimony and evidence of all parties I find that any evidence served on or after May 28, 2012 by either party will not be considered in this decision.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to return personal possessions; to a monetary order for the return of rent; for all or part of the security deposit and for compensation for the tenant's possessions, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on August 1, 2011 for a month to month tenancy beginning on September 15, 2011 for a monthly rent of \$1,050.00 due on the 1<sup>st</sup> of each month.

While the tenancy agreement states that a security deposit was required, the landlord testified that she never received one. The tenant testified the Ministry of Social Development (the Ministry) paid a security deposit directly to the landlord. The tenant testified that Ministry will only put security deposit cheques into the landlord's name.

The landlord testified she came to know that the tenants were provided a security deposit from the Ministry but that it was a cheque made payable to the tenants and she never did receive any payment. The tenant provided no documentary or corroborating evidence that they had paid a security deposit.

The tenant testified the tenancy ended after the landlord had issued a handwritten eviction notice on December 15, 2011 and he attempted to enter the rental unit on December 22, 2011 and found the locks to be changed. The tenant went on to say the police arrested him for break and entering. He remained in jail for 29 days.

The tenant testified that the landlord had a post dated cheque for the payment of rent for January 12, 2012 and that she cashed that cheque. The tenant testified that rent cheque was from the Ministry and the landlord would have received it on the last Wednesday of December 2011.

The landlord testified that she the tenant had been arrested, not for breaking into the rental unit, but for breaking into the landlord's home and for stealing her mail. The landlord further testified that when the tenant was arrested he was in possession of the cheque for January 2012 rent and that the police returned the cheque to her.

The landlord also testified that she had provided the tenant with a handwritten notice to end the tenancy on December 15, 2011 however, she had been informed by police that the notice would be ineffective as it was not in the form required under the *Act*. So on December 22, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (submitted into evidence) with an effective vacancy date of January 31, 2012.

The Notice cited, as reasons to end the tenancy, the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; the tenant has engaged in illegal activity that has or is likely to damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and the tenant has breached a material term of the tenancy agreement.

The tenant testified that he did not return to the rental unit and has not been able to retrieve his personal belongings and his work tools. The tenant provided "reprinted" invoices addressed to his company name at the landlord's address. The landlord testified that the phone number on these invoices is her personal cell phone.

The tenant testified he purchased these tools and had them in the rental unit. He also testified that all he received from the landlord was one bag of belongings and in mid February 2012 the landlord gave him back his camera. The tenant submits that he is missing a laptop; stereo; MP3 player; headphones and everything else, including Christmas gifts.

The landlord testified that prior to the start of the tenancy and just after she bought the house she found the tenant and his wife squatting in the garage of the property at which time she decided to allow them to rent the unit; for the male tenant to complete some construction work on the property; and that she and her family would help the tenants get back on their feet. The tenant contends they had been caretaking the property for the previous owner.

As a result, the landlord testified, the tenants had very little when they moved in and in fact she and her family bought the tenants many items including a TV and clothing; pots

and pans etc. The landlord testified that the female tenant was also arrested around the same time the male tenant was arrested.

She went on to say that the female tenant's father helped the landlord go through possessions and items were returned to the female tenant and the remaining personal items belonging to the male tenant were taken to his mental health worker for return to the tenant.

In relation to the work tools, the landlord testified that she had in fact purchased the tools the tenant is claiming has his and were to be provided to him in lieu of payment for the work that he was to perform on the landlord's unit as well as other projects on the residential property, but that he failed to complete the work satisfactorily and he was not entitled to the tools.

The tenant testified that the tools were his and that the only reason the landlord put them on her credit card was because she did not have cash to pay for the renovations to the residential property that she had hired him to complete.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the security deposit, as the landlord disputes that a security deposit was ever received by her the burden is on the tenant to provide sufficient evidence that he did pay; as he has not provided any evidence of such a payment, I find the tenant has failed to substantiate that he has suffered a loss resulting from a violation of the *Act*, regulation or tenancy agreement.

As to the tenant's claim for return of rent for the month of January 2012, the tenant has provided no evidence that he was unable to return to or occupy the rental unit for the month of January 2012 other than for the period of his incarceration. I accept the landlord's testimony that when she was informed of her ineffective Notice of December 15, 2011 she issued a 1 Month Notice to End Tenancy for Cause with an effective date of January 31, 2012.

As such, had the tenant, once released from jail sought to cancel the Notice by filing an Application for Dispute Resolution seeking additional to do so because of circumstances beyond his control, he may have been granted a decision to cancel the notice. I find the tenant decided against this course of action and as such the tenancy ended on January 31, 2012.

As a result, the landlord is entitled to the payment of rent on January 1, 2012 for the month of January 2012 as per the tenancy agreement and in accordance with Section 26 of the Act that requires tenants to pay rent when it is due according to the tenancy agreement. Therefore I find the tenant is not entitled to return of rent for January 2012.

From the testimony provided by both parties I find the ownership of the work tools claimed by the tenant as his own that he is seeking retrieval off and compensation for is currently disputed. As the ownership of these tools is intrinsically linked to a work contract I find this hearing is an inappropriate forum to determine that ownership. As the ownership of the work tools is currently undetermined, I find the tenant's Application for return of them and compensation for them is premature.

As the landlord has testified that she returned the tenant's personal to his mental health worker and the tenant has provided no evidence or even a list of what it is he claims to have owned that the landlord has kept, I find the tenant has failed to establish the landlord has failed to establish the landlord has any of his personal possessions.

### Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety without leave to reapply with the exception of the work tools.

As I have found the tenant's claim for the work tools is contingent on a determination of the ownership of those tools, I grant leave to the tenant to reapply if the tools are determined to belong to him by a court of competent jurisdiction or agreement by the parties.

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: June 05, 2012.

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Residential Tenancy Branch