

## **DECISION**

Dispute Codes      MNDC, RPP, O

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the Landlord to return the tenant’s personal property – Section 65.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the Landlord stated that their names were spelled incorrectly on the application and requested an amendment to make these changes. As such an amendment would cause no prejudice to the Tenant, I find that the amendment may be made and the application has been amended to correctly spell the Landlords’ names.

### Issue(s) to be Decided

Is the Tenant entitled to an order for the return of personal property?

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on February 1, 2012 on a fixed term to July 31, 2011. The Tenant lived with a co-tenant and each paid \$500.00 for monthly rent. At the onset of the tenancy the Landlord collected \$500.00 as a security deposit. The Tenant states that near the end of June 2012 he was sick and went to stay at his mother’s residence. The Tenant states that upon returning to his unit on approximately July 6, 2012, the Landlords were in the unit cleaning and his personal belongings were gone. The Tenant states that the Landlords refused to return his property. The Tenant states that

while he was at his mother's residence, his co-tenant moved out of the unit without notice on approximately June 27, 2012 and that rent for July 2012 was not paid. The Tenant states that he had no intention of moving out of the unit and was going to pay his rent but that he did not do so when the Landlords refused to return his property. The Tenant states that his property included a 52" screen TV, a second smaller TV, a bed, dresser, golf clubs, clothes and some dishes. The Tenant wants his personal property returned and if the Tenant is unable to obtain his property he seeks \$4,000.00 in compensation for the loss of his property.

The Landlord does not dispute that they removed the Tenant's property including the TV, bed, golf clubs and clothing and that they refused to return these belongings to the Tenant as the rent had not been paid and the unit was damaged. The Landlord states that after not being able to contact the Tenants, the Landlord went to the unit and upon nobody being home, they entered the unit, observed that that many belongings were no longer in the unit and so removed the remaining property and began to clean and repair the unit. The Landlords state that they will not return the Tenant's belongings unless the Tenant pays the outstanding rent and pays for damages to the unit and that they will see the Tenant in court to fight. The Landlords both became highly agitated during the Hearing and had to be cautioned several times for shouting. The Landlord states that the Tenant does not return calls and that they have no idea how to contact the Tenant. It is noted that the Tenant's address and phone number are in the application and the Tenant agrees that the Landlord may contact or mail the Tenant as provided in the application.

The Tenant states that had he been allowed into the unit, he would have repaired any damages that may have been there but was not given the chance by the Landlords.

### Analysis

Section 26 of the Act provides that whether or not a tenant paid rent, a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property. Further, this part of the section does not apply

if the tenant has abandoned the rental unit and the landlord complies with the regulations. Section 24 of the Residential Tenancy Regulation provides that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the property on the property that for a continuous period of one month has not been occupied.

Given the undisputed evidence of the Tenant that the unit was occupied by both he and his co-tenant until the end of June and that the Tenant returned to the unit on approximately July 6, 2012, I find that the Tenant could not reasonably have been seen to have abandoned his personal property. Based on the undisputed evidence of the Parties, I find that the Landlord without right seized the personal property of the Tenant and refused to return the property or otherwise make it available to the Tenant. According, I find that the Tenant is entitled to an order for the return of his personal property and I order the Landlord to make the Tenant's personal property available to the Tenant immediately and no later than midnight August 1, 2012. This finding and order was given to the Landlord's at the Hearing and is effective from the time of the Hearing.

Should the Landlord fail to return the Tenant's property or fail to make it available to the Tenant as ordered or if the Tenant's property is damaged or any items are missing, I give the Tenant leave to reapply for compensation. It is noted that the amount of compensation requested by the Tenant is \$4,000.00 should he not be able to obtain his property and I strongly caution the Landlord to act in compliance with the Act to return the Tenant's property. The Landlord is at liberty to make an application for dispute resolution in relation to any entitlements that the Landlord may claim.

### Conclusion

I order the Landlord to return the Tenant's property or make the Tenant's property available to the Tenant for removal immediately and no later than midnight August 1, 2012.

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: July 31, 2012.

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Residential Tenancy Branch