



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss under the Act, and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the tenant entitled to monetary compensation for loss?

Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2012. Rent in the amount of \$1,350.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenant. The tenancy ended at the end of June 2013.

The tenant claims as follows:

a.	Antique dinner service with gold inlay	\$ 200.00
b.	Two antique silver flasks	\$ 100.00
c.	One antique pickle dish	\$ 50.00
d.	One antique butter dish with knife	\$ 100.00
e.	One set antique silver birthday candle holders	\$ 100.00
f.	One antique silver flower bowl	\$ 100.00
g.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 700.00</b>

The tenant testified that the landlord had called them on July 12, 2013, to notify them that they had inadvertently left some personal items behind. The tenant stated there were no arrangements made to pick up their belongings at that time.

The tenant testified that later that day they telephoned the landlord and again several times on the July 14, 2013, however, they received no response from the landlord. The tenant stated that they then sent a letter to the landlord on July 17, 2013, asking that the items be returned by mail or to send a date and time that they could attend and pick up these items, and again they received no response. Filed in evidence is a copy of the letter dated July 17, 2013.

The tenant testified that they would like their belonging returned, or seek compensation for their loss. The tenant stated there was an old china set, which contained dinner plates, smaller size plates, serving dish and bowls. The landlord stated there were also antique silver pieces, such as flaks, and candle stick holders.

The tenant stated they have not provided any estimates or documents to support the value claimed for their belongings.

The landlord testified that they no longer have the tenant's possession and they were under the impression that the tenants had returned to the rental unit it pick up their belongings. The landlord stated that she had told the tenants that their belongings were going to left in a box in the garage which they could pickup as they had the access code to the key pad.

The landlord testified it would not make sense for her to keep any of the items when she called the tenants to notify them that they were left behind. The landlord testified that she has no idea what happened to the items.

The landlord testified that if the tenant did attempt to telephone her, they did not leave any messages. The landlord stated while she did receive the letter dated July 17, 2013, she did not response as she felt she was being threatened by the tenant.

The landlord testified that the tenant has an obligation to prove that all of these items existed and does not agree to the value assigned as there is no evidence to support this.

The witness for the landlord testified that he removed items that were left in the cupboard over the refrigerator. The witness stated there were very tarnished candle stick holders, there were two empty birk boxes and few old dishes and a few plates. The witness stated these items only filled approximately half a file box.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

The evidence of both parties was that the landlord called the tenant on July 12, 2013, to notify them that they had inadvertently left some personal items behind. The evidence of the landlord was that these items were left in a file box in the garage for the tenants to pick up, and was under the assumption that had retrieved them. The evidence of the landlord was that this box had gone missing and has no idea what happened to the box if not pickup by the tenants.

The evidence of the tenant was that they believed the value of their belongings was \$650.00, however, have provided no evidence to support the actual value. The evidence of the landlord was that she does not believe all the items claimed where left behind and does not believe the value claimed for those belongings.

While I accept the tenant inadvertently left some items behind, I also accept the landlord's version that she has no idea what happened to those belongings, as it would not make sense to contact the tenant if her intent was not to have their belongings returned. I accept that these items were not returned to the tenants and inadvertently went missing.

However, under the Act the landlord has no obligation to contact the tenants or store their belongings when items are left behind, unless the value of those belongings are greater than \$500.00.

When a party seeks compensation for their loss they must prove a violation of the Act. I find the tenant has not provided any supporting evidence, such as estimates for me to determine if these items had a fair market value greater than \$500.00, and it is just a likely that the fair market value of these items could be less than \$500.00.

As a result, I find the tenant has failed to prove that the landlord violated the Act

Therefore, I dismiss the tenant's application for monetary compensation for loss. As the tenant was unsuccessful with their application they are not entitled to recover the cost of the filing fee from the landlord.

### Conclusion

The tenant's application is dismissed.

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: December 06, 2013

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Residential Tenancy Branch

