



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, RPP

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”), regulation or tenancy agreement. The Tenant also applied for the return of his security deposit and his personal property.

The Tenant appeared for the hearing and provided affirmed testimony during the hearing and documentary evidence in advance of the hearing. The Tenant provided the Canada Post tracking number and report which indicates the Landlord received and signed for the Notice of Hearing documents.

The Tenant testified that he had amended his Application to increase his monetary claim to \$2,136 and had served the Landlord personally with a copy of the amended Application and the written evidence the next day after making the amendment. As a result, I find that the Tenant served the Landlord with the hearing documents and a copy of the amended Application in accordance with the Act.

The Landlord failed to appear for the hearing and did not provide any written evidence prior to the hearing, despite being served for this hearing in accordance with the Act. As a result, I have considered the Tenant’s undisputed testimony and evidence in making a decision in this matter as follows.

### Preliminary Matters

At the start of the hearing, I determined that the Tenant had not provided the Landlord with his forwarding address in writing at the end of the tenancy. The Tenant testified that the Landlord was aware of his address but the Tenant did not know that he had to provide this to the Landlord in writing in order to get his security deposit back.

Section 38 of the Act requires that a Tenant provide the Landlord with a forwarding address in writing. This is to be done before the Landlord's obligation to deal with the security deposit is engaged under the Act.

As a result, I find that it is not sufficient for the Tenant to require that the Landlord assume an address be used as a forwarding address for the purposes of Section 38 of the Act. As the Tenant has not provided sufficient evidence to show that the requirements of the Act in relation to the forwarding address were met, I find that the Tenant's application for the return of the security deposit is premature.

However, the Landlord is hereby put on notice that the Landlord will be deemed to have received the decision 5 days after the date it was written and will have 15 days from that date of receipt of the decision to deal with the Tenants' deposit pursuant to Section 38 of the Act. The Tenant confirmed the address on his Application as the forwarding address. If the Landlord fails to deal with the Tenant's security deposit under the provisions of the Act, the Tenant has leave to re-apply for its return.

#### Issue(s) to be Decided

The hearing continued to hear the Tenant's Application for compensation for loss as a result of an illegal eviction and the return of the Tenant's personal property.

#### Background and Evidence

The Tenant testified that this tenancy began in August, 2013 on a month to month basis. No written tenancy agreement was completed but rent was established at \$540.00 payable by the Tenant on the first day of each month. The Tenant paid a \$300.00 security deposit to the Landlord at the start of the tenancy which the Landlord still retains.

The Tenant testified that on October 5, 2013 he returned from the store to discover that the Landlord had changed the locks on his rental suite. The Tenant claims that this was done in retaliation to the tenant reporting the Landlord to the city for having illegal rental suites in the property. The Tenant called the police who advised that they could not take any action as this was not under their jurisdiction.

The Tenant states that he was made homeless for the next few months during which he tried to get his personal property back which he had inside the rental suite. The Tenant provided text messages with the Landlord to support his claim that he had spent weeks trying to get his property back, most of which the Landlord failed to return.

The Tenant claims that the Landlord held back a flat screen television which was eventually returned after multiple requests. However, the Landlord has failed to return back to the Tenant food items which he had left in his rental suite, a list of which was provided as evidence for this hearing, totaling \$104.00. The Tenant also testified that the Landlord has not returned a Samsung cell phone and some headphones which he bought for \$128.00 and \$29.00 respectively. The Tenant provided receipts for these two items. The Landlord also claims \$40.00 for a used DVD player and various electronic cables. The total amount claimed for these items including tax is \$220.00.

In addition the Tenant claims \$1,000.00 for aggravated damages and \$500.00 for punitive damages. This is based on the fact that the Landlord illegally evicted the Tenant which created a lot of stress and anxiety for him and had caused him to be homeless for a period of 2 months.

When the Tenant was questioned about why he had not applied for an Order of Possession to get back into the rental suite after the Landlord had changed the locks, the Tenant responded stating that he was not aware of this option under the Act and was not informed of this by the Residential Tenancy Branch when he spoke to an Information Officer.

I also note from the Tenant's documentary evidence that an order document was issued against the rental suite by the city asking that the property comply with the by-laws in having a legal suite by December 31, 2013. At the end of the document the author writes "Note: Pursuant to the Residential Tenancy Act, you are required to serve eviction notice to your tenants on the proper prescribed government form".

### Analysis

As the Landlord failed to appear for the hearing, I have accepted the Tenant's undisputed evidence and I make my findings, based on the balance of probabilities, as follows.

In relation to the Tenant's personal property, I find that the Tenant's evidence in the text messages indicates that there was property left inside the rental suite which I accept has not been returned to the Tenant. As a result, I accept the Tenant's evidence and find that he is entitled to an award for the food items he would have likely had in the rental suite and the missing items claimed, in the amount of \$324.00.

In relation to the Tenant's claim for aggravated damages, I have considered Section 7 of the Act which requires a party making a claim for damage or loss under the Act to

minimize the loss. In this case, I find that the Tenant had a legal remedy under Section 54 of the Act, which would have allowed him to get back into the rental suite. However, the Tenant did not pursue this option as he said he was unaware of this. At the start of a tenancy, both parties are responsible for understanding their rights and obligations under the Act. As a result, I find that Tenant has failed to mitigate his loss by not pursuing his legal options.

However, Section 31 of the Act does not allow a Landlord to change the locks or prevent access to the rental suite. In this case, I accept the Tenant's evidence that the Landlord changed the locks to the Tenant's rental suite which was against the Act and therefore the Tenant is entitled to compensation for this violation.

In considering the amount of compensation to be awarded to the Tenant, I find that the Tenant had not provided sufficient evidence to show how the impact of the illegal eviction led to his monetary claim. Policy Guideline 16 to the Act provides that an arbitrator may award for damages where the loss has not been proven, but there is an affirmation that there has been an infraction of a legal right.

I have also considered the 'order' against the rental suite which required the Landlord to end the tenancy in accordance with the Act in order to meet the requirements of the by-laws in relation to the illegal suite. If the Landlord had used the proper notice under the Act to end the tenancy in order to comply with the city by-laws, this would have required a one month notice.

Based on all of the foregoing, I find that the Tenant is entitled to aggravated damages. This is based on the fact that the Landlord would have had knowledge it was wrong to end the tenancy in this manner and by changing the locks to the rental suite, the Landlord acted deliberately. I also find that the Landlord should have reasonably foreseen this would cause hardship to the Tenant and that this violation of the Act was sufficient in depth and duration to cause a significant impact on the Tenant's life.

However, I find that the amount being sought by the Tenant is excessive and I find that compensation for one month of rent in the amount of \$540.00 is more appropriate, taking in to consideration that the Tenant did not take the relevant steps to mitigate his loss.

Therefore, the total amount of monetary compensation payable by the Landlord to the Tenant in relation to the Tenant's Application for compensation and return of his personal property is \$864.00.

Policy Guideline 16 to the Act explains that an arbitrator does not have the authority to award punitive damages, to punish the respondent. As a result, I dismiss the Landlord's monetary claim for punitive damages in the amount of \$500.00

### Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order pursuant to Section 67 of the Act for a total amount of **\$864.00**. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make the payment. The Tenant's Application for the return of the security deposit is dismissed with leave to re-apply.

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: April 10, 2014

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Residential Tenancy Branch

