



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, FF  
                              MNSD, MNDC

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The landlord has also applied for an Order for substitutional service of documents relating to the landlord's application for monetary orders.

The landlord and the tenant attended the hearing and the landlord was accompanied by legal counsel.

The tenant's application had been before the Residential Tenancy Branch which resulted in a Decision and Order dated October 8, 2013. The landlord applied for a review of that Decision and Order and was successful in obtaining a new hearing. The new hearing was conducted on January 14, 2014 which resulted in a Decision and Order the same day. At a Judicial Review Proceeding, the landlord was successful in obtaining another hearing before the Residential Tenancy Branch, which was ordered by the Supreme Court of British Columbia. This Decision is the result of that new hearing.

The landlord filed the application for dispute resolution requesting that it be joined with the hearing ordered by the Supreme Court of British Columbia, and for an Order for substitutional service upon the tenant. After hearing submissions by the parties, I found that it would not be appropriate to hear or consider either of the landlord's applications given the Order of the Supreme Court of British Columbia and I adjourned those matters. I am not seized of the matters; I have made no findings of fact or law with

respect to the merits of the landlord's applications, and I order that the landlord's application for a monetary order be severed from this hearing. The landlord's counsel advised that since the landlord's application is adjourned, the landlord's application for substitutional service upon the tenant is withdrawn.

**A notice of a new hearing will be provided to the parties by the Residential Tenancy Branch with respect to the landlord's application. Any evidence that either party intends to rely on must be provided to the Residential Tenancy Branch and to each other within the time set out in the Rules of Procedure.**

The parties each gave affirmed testimony, and the tenant called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the testimony and evidence provided. None of the evidence provided by the landlord in support of the landlord's application is considered in this Decision. The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

#### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the pet damage deposit or security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages and loss of personal belongings?

#### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on April 1, 2012 and ended on September 28, 2012. Rent in the amount of \$1,250.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$625.00 which is still held in trust by the landlord. No move-in condition inspection report was completed.

The tenant further testified that the parties had a tenancy agreement, and the landlord had a separate tenancy agreement with the tenant's roommate. The roommate moved out on September 2, 2012. The tenant's evidence contains a letter dated September 7, 2012 signed by the landlord confirming that the landlord was aware of that. The letter appears to be directed to the Residential Tenancy Branch, addressed to "Whom it May

Concern,” and also states that the landlord gave a notice to end the tenancy and went to the Residential Tenancy Branch to get an Order of Possession but was told to wait until September 13, 2012. It also says that the tenant kicked out the roommate. The letter goes on to say: “Please help me to move this girl out of my property since there is police every other day & not paying Terasen, doing drugs, wrecking my place, damaging. I have a police No. if you want.”

The tenant testified that the parties had attended a dispute resolution hearing in mid-September, 2012 wherein the parties agreed to end the tenancy effective October 31, 2012 and rent was paid in full to the end of September, 2012. The Order of Possession was issued in favour of the landlord, which contained the tenant’s name and that of the previous roommate because the notice issued by the landlord contained both names.

The day after the hearing, the tenant was incarcerated and remained in custody until April 13, 2013.

The tenant had 2 cats and 2 dogs and made arrangements with her mother and friends to take care of the pets, but it took time to release the keys to them. The tenant planned to have her belongings sent to storage. The tenant’s friends went to the rental unit to take care of the pets and went back a couple of days later and an argument ensued with the landlord because the landlord and 2 other people were in the rental unit taking the tenant’s electronics and the landlord told the friend to mind her own business. The friends went back again a few days later, and the landlord had changed the locks on September 16 or 17, and the landlord had allowed the tenant’s previous roommate into the rental unit to remove the tenant’s belongings around September 17, 2012, without the tenant’s consent. Then on September 28, 2012 the tenant’s friend had been called by a neighbour who advised that the friend should go to the rental unit quickly because all of the rest of the tenant’s belongings had been removed by the landlord and everything was outside. The tenant’s friend tried to get some of the items but by the time the friend got a truck there, the first load had been taken away and just garbage and useless stuff remained. Nothing had been salvaged for the tenant.

The tenant has provided a copy of a letter from the friend dated June 6, 2013 stating that the friend attended the rental unit to feed the cats around September 16, 2012 and found the landlord allowing different people to enter the rental unit taking items such as a TV, X-Box and furniture. The letter also states that the landlord would not allow the friend to get close, but a truck was being loaded with the tenant’s belongings and it was full. The friend called police, the landlord was aggressive, and the police said a letter of permission for the friend to enter was required. The friend returned 2 days later with a letter of authorization and the locks had been changed. On September 28, 2012 the friend received a call from a neighbour of the rental unit saying the tenant’s belongings

were thrown out into the back yard and alley and a U-Haul was there. The friend went to the rental unit and observed everything packed up, garbage left all over. The friend attempted to contact the landlord on several occasions, most of which resulted in no response, or responded that it was none of the friend's business. The letter of the friend also states that upon advising the tenant that one dog had been put down and both cats taken to the SPCA the tenant "...became quite distraught which resulted in a downward spiral of isolation and depression."

The tenant further testified that she had given the friend a letter authorizing the friend access to the rental unit. A copy of that letter has also been provided. The letter is not dated and gives permission to 4 persons to enter the residence, pack the tenant's belongings and release the 2 cats to the SPCA. When the friend arrived and gave the landlord the letter of authorization, the landlord still refused the friend entry to the rental unit.

The tenant has also provided a letter from another friend dated August 7, 2014 which states that the writer drove by the rental unit in September of 2012 and noticed an entire house emptied into the back alley including diapers, furniture, DVDs, videos and electronics, and the writer recognized the furniture belonging to the tenant.

When the tenant was released from custody, the tenant stayed at a half-way house and now has a home and got hand-me-downs of items for the household and some items were donated to the tenant. The tenant still needs a bed for her son. The tenant became depressed, isolated and didn't do anything, just sat in her room. The tenant testified that it still bothers her. The pets are gone and the tenant's locket containing her deceased baby's ashes, and her other child's foot-print are priceless. The tenant stated that she can't get over the fact that this happened and she lost all of her belongings.

The tenant has provided a list of items missing from the rental unit and has estimated the replacement costs. The items include household items, clothing, books, jewelry, furniture, etc., as well as pets and other "priceless" items. The tenant claims \$25,000.00, being the maximum that can be claimed under the *Residential Tenancy Act* but estimates the loss to be \$30,230.00.

The tenant also testified that the landlord has not returned any portion of the security deposit. The tenant has provided a forwarding address in writing in a letter dated October 9, 2012 which also asks the landlord for the tenant's possessions. Another letter was sent to the landlord advising the landlord to get ahold of the tenant's lawyer. The tenant also sent her forwarding address in writing to the landlord in an application for dispute resolution but the landlord didn't pick up the mail. The tenant sent another

application with a forwarding address by registered mail. The tenant claims double the amount or \$1,250.00.

The tenant has also provided a copy of a 1 Month Notice to End Tenancy for Cause dated August 13, 2012.

**The tenant's witness** is the tenant's mother and testified that she had been at the rental unit during the tenancy about 4 or 5 times and saw the tenant's TV, VCR and CD player. The witness gave to the tenant the ashes of the tenant's first baby in a pendant and also gave the tenant jewellery.

The witness also testified that in late September, 2012 she received a call from the tenant's friend saying that the tenant had been arrested. The witness was angry because she was having a birthday celebration for her mother and the tenant was supposed to attend it. The friend also told the witness that the tenant wanted the witness to move her belongings into storage.

The witness received a call about a week later from the tenant's friend saying that she had been to the rental unit to deal with the tenant's pets but couldn't get in and saw all of the tenant's belongings outside on the street, and tried to get some of the child's clothing. The witness asked about furniture and the friend advised that it was all gone, there was nothing left in the house.

The same day or the next morning the witness went to the rental unit and the apartment was completely empty. She didn't go into the residence but looked through the window. The witness looked for the dogs because she had planned to take the smaller dog, but there was no sign of any animals there. Before leaving, the tenant had told the witness that the landlord lived close to the rental unit, so the witness looked to see if she could find the landlord, but couldn't locate the landlord's house. The witness didn't try to get ahold of the landlord after that. The only time that the witness ever spoke with the landlord was prior to the tenancy when the landlord asked for a reference.

**The landlord** testified that the security deposit was paid to the landlord by a government Ministry. There were 2 tenants at the time and the landlord received \$312.50 from the Ministry for each of them, and the landlord believed it was to be returned to the Ministry at the end of the tenancy if there were no damages. One of the tenants moved out at the end of June and another tenant moved in. After the tenant had been arrested the landlord called the Ministry to tell them not to send anymore rent cheques because the tenant was incarcerated. The landlord asked about the security deposit and was told to keep it if there were damages, so the landlord took photographs of the rental unit and took them to the Ministry office.

The landlord also testified that the first she learned of the tenant's forwarding address was when the landlord was served with the tenant's application for dispute resolution prior to the January 14, 2014 hearing.

The landlord also testified that there were problems during the tenancy. There was excessive noise at night, marihuana smell, people coming and going, and the police and landlord went to the rental unit several times. The landlord served the tenants with a notice to end the tenancy and both tenants filed a dispute. A copy of the notice has been provided and it is dated August 13/12 and contains an expected date of vacancy of 15<sup>th</sup> Sept 2012. The reasons for issuing it are:

- *Tenant is repeatedly late paying rent* (handwriting beside states: "Terasen was not paid last month");
- *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* (handwriting beside states: "Smoking pots");
  - *put the landlord's property at significant risk;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *damage the landlord's property* (handwriting beside states: "more than 1 pet in the house/neighbours complain");
- *Tenant has not done required repairs of damage to the unit/site.*

A hearing was scheduled for September 13, 2012 and the tenant told the Arbitrator she had no place to go and wanted to stay another month. The landlord agreed if the hydro would be paid and other conditions, and the landlord obtained an Order of Possession effective October 31, 2012.

On September 15, 2012 a few of the tenant's friends were at the rental unit and a neighbour called the landlord. The landlord had told the neighbour previously that she had had trouble with the tenants. The landlord went to the rental unit with the neighbour and there were people inside and outside of the rental unit. The landlord does not know if they took anything but the people told the landlord that the tenant was in jail and they were looking after the tenant's pets, and the landlord recognized one of them as a friend of the tenant.

A Statutory Declaration from the neighbour has also been provided which states that the neighbour saw 5 people appearing to be moving items out of the rental unit on September 15, 2012 and the neighbour called the landlord. The neighbour attended the rental unit with the landlord, and the people advised that they were friends of the tenant

and that the tenant was in jail, and they were taking care of the tenant's possessions. The Statutory Declaration also states that the neighbour had complained to the landlord about the rental and on one occasion the landlord asked the neighbour to watch out for problems and let the landlord know if anything concerning was noticed.

On September 17, 2012 the previous roommate of the tenant, the tenant's friend, and another person were at the rental unit arguing and started swearing at the landlord saying they were allowed to be there because the tenancy doesn't end until October 31, 2012. The landlord called the police who asked to see a tenancy agreement, and it was provided. The police said that the previous roommate could continue to move belongings. The landlord did not give anyone a key. The police told the landlord that she could change the locks. The landlord went to the Residential Tenancy Branch and was told that the landlord had to return the security deposit and save the tenant's belongings, but the landlord could not reach the tenant and had no information about the tenant's mother. The locks were changed on September 20, 2012.

The landlord also testified that she didn't call the tenant's mother because she didn't have a number. Then she testified that she had tried to prior to the tenancy but didn't receive an answer. During cross-examination the landlord testified that she called the tenant's mother on September 15, 2012 and left a message.

The landlord denies any knowledge of the tenant's belongings being in the alley or any knowledge of an incident on September 28, 2012.

On September 30, 2012 another friend of the tenant called the landlord saying she was going to pick up the tenant's belongings and her mother was going to store some of it. The landlord told her to get a letter of authorization from the tenant first. The friend returned with the letter of authorization and the landlord attended the rental unit with her. She was there for about 2 ½ hours and then told the landlord that whatever was left was garbage. The landlord has not touched anything belonging to the tenant and obtained a signed letter from the friend acknowledging that the friend had removed the tenant's bed frame, mattresses, dressers, night tables, coffee tables and other belongings. A copy of the letter has been provided as an exhibit to a Statutory Declaration made by the landlord. The letter is dated September 30, 2012 and also states that the tenant's clothing was removed by 2 other friends of the tenant. The landlord denies receiving the letter of authorization prior.

The landlord had the rental unit cleaned on October 1, 2012 and the unit was re-rented on October 14, 2012.

The Statutory Declaration of the landlord also states that the landlord did not remove any of the tenant's possessions from the rental unit or authorize anyone to do so, and to the best of the landlord's knowledge, the only people who entered or removed items of value between the tenant's incarceration and the new tenancy on October 14, 2012 were the people authorized by the tenant, and the roommate who had a valid tenancy agreement and whom the Residential Tenancy Branch had ordered was permitted to do so until October 31, 2012. The landlord also testified that the contents of the Statutory Declaration are true.

During cross examination the landlord agreed that she had written the letter of September 7, 2012.

Also provided are a tenancy agreement between the landlord and 2 tenants dated April 1, 2012 with notes containing their phone numbers and the tenant's mother's phone number; a tenancy agreement between the landlord and another tenant for the same rental unit dated July 1, 2012; and copies of Reasons for Judgment from 3 previous cases, not related to these parties but as cases on point, as submitted by the landlord's counsel.

### **Closing Submissions**

The landlord's counsel submits that the tenant abandoned the rental unit, and relies on Section 24 of the regulations. Section 25 applies only in cases where a landlord removes items belonging to a tenant, but the landlord says she didn't remove any items and wasn't personally responsible. The tenant's previous roommate was the first to enter and was entitled to as evidenced by the tenancy agreement and the Order of Possession. The tenant has failed to establish that the landlord was responsible for the loss of the tenant's belongings.

The tenant's submissions were made by the tenant's mother on behalf of the tenant, who stated that the landlord knew the previous tenant had moved out but allowed her entry to remove the tenant's belongings. Further, the landlord failed to contact the tenant's reference. The landlord breached the contract by changing the locks prior to the end of the tenancy preventing the tenant's authorized friend to pack the tenant's belongings and move them to storage.

The tenant disputes the letter of September 30, 2012 in the landlord's evidence.

### Analysis



Firstly, with respect to the security deposit, the *Residential Tenancy Act* states that a landlord must return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. I do not accept the testimony of the landlord that the Ministry told her to keep the security deposit if there were damages. That is contrary to the *Act*. The *Act* does not say, "...unless it was paid by another party or government Ministry," it says to return to the tenant. The *Act* also says that if a landlord fails to return the deposits or make an application for dispute resolution claiming against the deposits within that 15 day period, the landlord must repay the tenant double the amount. I do not accept that a government Ministry would tell the landlord information that would cause the landlord to have to repay double. I find that the landlord received the tenant's forwarding address in writing prior to January 14, 2014 and did not return any portion of the deposit to the tenant and did not make an application for dispute resolution claiming against it within the 15 day period. Therefore, I find that the tenant has established a monetary claim for double the amount, or \$1,250.00.

With respect to the balance of the tenant's application, I have reviewed the evidentiary material provided by the parties for this hearing as well as the cases provided by the landlord's counsel. In order to be successful, the onus is on the tenant to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate, or reduce such damage or loss.

I am satisfied that the tenant has established elements 1 and 4, having given keys to a friend, an authorization letter to enter the rental unit, and to ensure that the pets were taken care of. There is no dispute that the tenant lost all of her belongings. The landlord's counsel submits that elements 2 and 3 of the test have not been met in that the tenant has failed to establish that the loss exists as a result of the landlord's failure to comply with the *Act*, or that the amount claimed has been proven, and those are the issues before me.

I do not accept that, even though the landlord resides close to the rental unit the landlord is responsible for ensuring that the tenant's belongings were safe while the tenancy was still in place. However, it is clear that the landlord had an Order of Possession effective October 31, 2012 but had the rental unit cleaned a month prior and re-rented it prior to the date the landlord was entitled to possess it according to the previously issued Order of Possession.

Counsel for the landlord also submits that the previous roommate was the first to enter the rental unit and was entitled to because her name appeared on the tenancy agreement and on the Order of Possession. The Statutory Declaration of the landlord also states that the only people who entered or removed items of value between the tenant's incarceration on September 14, 2012 and the new tenancy on October 14, 2012 were the people authorized by the tenant, and the roommate who had a valid tenancy agreement and whom the Residential Tenancy Branch had ordered was permitted to do so until October 31, 2012. I don't accept that because it's clear that the landlord knew that tenancy with that tenant had ended prior to obtaining the Order of Possession. That roommate moved out between the date the notice to end tenancy was issued by the landlord and September 13, 2012, the date of the hearing, and the landlord was aware of that at least a week before the hearing. The landlord knew prior to September 7, 2012 that the tenant's roommate had moved out, did not pay rent, and that person was not authorized by the tenant to enter the rental unit.

It's also clear that the landlord was anxious to end the tenancy, given the number of reasons checked off on the notice to end the tenancy, the hand-written notes on it, and the landlord's letter to the Residential Tenancy Branch dated September 7, 2012 describing her need and desperate request for an Order of Possession. The Act gives specific reasons for ending a tenancy and the landlord has, in my opinion, designed the reasons in the notice to fit the landlord's needs: failure to pay the hydro bill is not repeated late rent; having more than 1 pet in the rental unit is not illegal activity. Further, the landlord testified that the tenant told the Arbitrator at the hearing that she had no where to go. I find that the landlord agreed to an Order of Possession effective October 31, 2012, at least in part, to be sure to have possession of the rental unit by that date at the latest.

The landlord testified that on September 15, 2012 the tenant's friends were at the rental unit to feed the pets and told the landlord that they were allowed to be there. Then on September 17, 2012 the tenant's friends and another person were at the rental unit arguing and started swearing at the landlord saying they were allowed to be there because the tenancy doesn't end until October 31, 2012. The landlord called the police who asked to see a tenancy agreement, and it was provided. The police said that the person could continue to move belongings out and told the landlord that she could change the locks. However, the landlord knew at the time that the person no longer resided there but never offered that information to the police and also failed to tell the police that the landlord had another tenancy agreement for the same rental unit with another tenant. The landlord testified that the locks were changed on September 20, 2012 and the tenant believes it was earlier, but no evidence of the date has been provided. I do not accept that the police would tell the landlord that the friend could

continue to move things out because the tenancy agreement was provided, yet also told the landlord to change the locks. If the officer did tell the landlord that, he or she certainly would not have done so at that point had the officer known that the tenancy had ended weeks prior or that another tenant had legal possession until the end of the following month.

The landlord also testified that she went to the Residential Tenancy Branch and was told that the landlord had to return the security deposit and save the tenant's belongings, but the landlord could not reach the tenant and had no information about the tenant's mother. She also testified that she left a message with the tenant's mother, but the tenant's mother never heard from the landlord.

In the circumstances, I find that:

- The landlord issued a notice to end the tenancy to the tenant and her roommate on August 13, 2012 effective September 25, 2012;
- Both tenants disputed the notice;
- The tenant's roommate moved out September 2, 2012 and the landlord was aware of that prior to September 7, 2012;
- The remaining parties attended Arbitration on September 13, 2012 and agreed to end the tenancy effective October 31, 2012;
- The tenant was incarcerated on September 14, 2012;
- The tenant made arrangements with her mother and a friend to take care of her pets and pack her belongings with intent to have them stored;
- On September 15, 2012 the previous roommate of the tenant attended the rental unit and started removing electronics;
- On September 17, 2012 the previous roommate of the tenant, the friend of the tenant and another person attended the rental unit;
- Police were called and the previous roommate or the landlord provided a copy of a tenancy agreement, although no longer in effect;
- Neither the landlord nor the previous tenant advised the police that the tenancy agreement was no longer in effect or that the previous tenant had not paid any rent for September;
- Neither the landlord nor the previous tenant advised the police that another tenant also had a tenancy agreement for the rental unit with the landlord;
- The tenant's letter of authorization does not name the previous roommate, but does name the friend of the tenant, and does name the friend who provided the letter dated September 30, 2012 of the landlord's evidence;
- The tenant gave the keys to the friend, not the previous roommate;

- The police did not tell the landlord to change the locks, or did so only because the landlord failed to provide all relevant information;
- The landlord made no effort to contact the tenant's mother despite having her contact information;
- The landlord changed the locks to the rental unit between September 17 and September 20, 2012;
- The landlord had the rental unit cleaned on or about October 1, 2012;
- The landlord re-rented the unit effective October 14, 2012.

The parties have both provided letters of witnesses, and the letter of September 30, 2012 provided by the landlord is contested. I find the witness to be most credible, and I reiterate: The witness received a phone call from the tenant's friend saying that the friend had been to the rental unit to deal with the tenant's pets but couldn't get in and saw all of the tenant's belongings outside on the street, and tried to get some of the child's clothing. The witness asked about furniture and the friend advised that it was all gone, there was nothing left in the house.

The landlord's counsel argues that the landlord was justified in considering the rental unit abandoned, pursuant to Section 24 of the Regulations, which states:

**Abandonment of personal property**

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
  - (b) subject to subsection (2), the tenant leaves the personal property on residential property
    - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
    - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
  - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

I find that the landlord had no grounds to believe that the rental unit had been abandoned. The tenancy agreement had not ended, one month had not passed before the landlord changed the locks, the tenant had not removed or had agents remove all personal property, and the landlord received no notice that the tenant did not intend to return or have her agents return to retrieve belongings prior to the end of the tenancy. In order to satisfy me that the landlord was entitled to consider the rental unit abandoned, the landlord would have to satisfy me that the circumstances were such that the tenant could not reasonably be expected to return. Instead, I find that the landlord ignored certain facts and accepted advice from an “official” (a police officer) that she could change the locks without providing the facts. I find that the landlord wanted the tenant out and took whatever steps she could to end the tenancy and took advantage of the fact that the tenant was incarcerated and unable to deal with the tenancy. I find that the landlord, as done on the notice to end the tenancy, designed things in a fashion to attempt to justify that the tenant had abandoned the rental unit.

I find that the landlord failed to comply with the *Residential Tenancy Act* by taking possession of the rental unit without lawful right and by changing the locks that give access to the rental unit preventing the tenant’s agents from moving the tenant’s belongings to safe storage, thereby causing the tenant to suffer damages.

With respect to quantum, the tenant has provided a list of missing items and has, in my opinion, given very broad estimates as to their new or used replacement costs. Most of the items are things most people have in their homes, such as furniture, rugs, and such and I have no idea what condition any of the items were at the time. Many of the items have no commercial value but sentimental value to the tenant. The matter of quantum, in my opinion, is better measured in a case such as this by the effect that the damages have on the tenant. The tenant testified that she has been given some donations and hand-me-downs but still doesn’t have a bed for her son, and lost all of her belongings. She also testified that she went through a period of depression, became isolated, didn’t do anything, just sat in her room, it still bothers her, the locket and baby’s ashes and child’s footprint are priceless, and can’t get over the fact that this happened to her. The tenant also lost 4 pets. The letter of a friend also describes the tenant’s mental condition as being on a downward spiral of depression.

The maximum amount that can be awarded under the *Residential Tenancy Act* is \$25,000.00, which I find is reserved for cases severe in nature and would apply in this case had the landlord moved the tenant's belongings into the street. I do not accept that was the case, however the financial and emotional effect on the tenant would be similar. In the circumstances, I find that the tenant is entitled to damages, inclusive of aggravated damages and loss of personal belongings, in the amount of \$20,000.00.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$21,250.00.

This order is final and binding and may be enforced.

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 14, 2015

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Residential Tenancy Branch

