



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, RPP, OPT, AAT, FF

### Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Tenant for an Order of Possession of the rental unit, an Order that the Tenant be allowed access to the rental unit, an Order that the Landlord return the Tenant's Personal Property, a Monetary Order for compensation or loss, an Order for return of the security and to recover the filing fee for the Application.

Both parties appeared at the hearing. Both Landlords attended the hearing. The Landlord, B.M. advised that her legal name was B.L. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

At the outset of the hearing the Tenant confirmed that he had vacated the rental unit. Accordingly, his request for an Order of Possession was not required, and is hereby dismissed.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As I informed the parties during the hearing, it is my determination that the priority claim is the Tenant's request for access to the rental unit and return of his personal possessions. Further, as the Tenant has yet to retrieve his items, the extent of any potential monetary loss is unknown. I dismiss with leave to reapply, the Tenant's application for a Monetary Order pursuant to sections 38 and 67.

### Issues to be Decided

1. Should the Tenant be permitted access to the rental unit pursuant to section 30 of the *Act*?

2. Is the Tenant entitled to an Order pursuant to section 65(1) that the Landlord return his personal property?
3. Should the Tenant recover the \$100.00 fee paid to file his application?

### Background and Evidence

The Tenant testified that the tenancy began in November of 2014. He paid a security deposit of \$500.00 at the time.

The Tenant testified that the tenancy ended January 14, 2015. The Tenant further testified that the Landlord has refused him access to the rental unit to retrieve his personal items and his vehicle.

The Tenant provided in evidence a letter titled "Subject: Tenancy problems" wherein he claimed as follows:

- He has attempted since February 15, 2015 to retrieve his personal items and that he sent movers on that date, and that when they attempted to attend the property the Landlord threatened to call the police and have them charged with trespass.
- That he sent a letter to the Landlord, via courier, which was delivered on February 23, 2015, and in which the Tenant provided a list of the belongings he wished to retrieve, a copy of the *Residential Tenancy Act*, as well as confirmation of February 25, 2015 as the time the movers were to attend the rental unit.
- That the Landlord called the movers on February 24, 2015 and asked to meet with them prior to the 25<sup>th</sup>. As the movers had only paid to move personal items, they declined to be involved or meet.
- On February 25, 2015, the movers as well as a tow truck company, hired by the Tenant, attended the rental property. The movers and the tow truck company were denied entry by the Landlord.

The Tenant made the within application on April 9, 2015.

The Landlord, R.M., testified that he packed up all the Tenant's belongings on March 26, 2015 and that the Tenant could easily retrieve his items in half an hour as they were so well packed. The Landlord confirmed he also prepared an inventory of the items packed on that date. The Landlord testified that the Tenant's vehicle had been moved by a tow truck to the back of the rental property.

The Landlord, B.L., confirmed that she has refused the Tenant's request for his belongings and vehicle and that she wished to retain the Tenant's possessions as collateral for money she claims he owes her. She further claimed that she did not have the Tenant's forwarding address until she received his application filed April 9, 2015.

On April 20, 2015, the Landlord made her own application to retain the security deposit and for a Monetary Order pursuant to section 67 on September 23, 2015. The Landlord advised that their hearing was set to be heard on September 23, 2015.

The Tenant provided in evidence a list of items he says remain at the rental unit as well as his vehicles.

### Analysis

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

While the Landlord may believe she has a valid monetary claim against the Tenant, she has no legal right to do so, and in retaining the Tenant's property the Landlord is in breach of the *Act*.

Pursuant to section 65(1)(e) of the *Act*, I find that the Landlord has not complied with the *Act*, and must return the Tenant's personal property including his possessions and vehicles.

Section 30 of the *Act* provides that a Landlord may not unreasonably restrict access to a residential property by the tenant of a rental unit that is part of the residential property.

I Order, pursuant to sections 30 and 65(1)(e) of the *Act* as follows:

1. The Tenant, or a third party acting on behalf of the Tenant, shall be permitted to attend the rental unit on May 9, 2015 between 1:00 p.m. and 3:00 p.m. for the purposes of retrieving his personal property and vehicles.
2. The Landlord will make all the Tenant's personal property and vehicles available for pick up on May 9, 2015 between 1:00 p.m. and 3:00 p.m. and will provide the Tenant with a copy of the inventory which the Landlord testified had been drafted on March 26, 2015.
3. The Tenant shall be entitled to recover the fee paid to file his application in the amount of \$100.00 and I grant the Tenant an Order pursuant to section 67 for this amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.
4. The Tenant shall be at liberty to apply for a further Monetary Order for the cost of retrieving his items, and seek damages in the event the Landlord retains or damages his personal property and vehicles.

Should the Tenant make an application for a further Monetary Order, it is suggested that he make his best efforts to have the hearing set at the same time as the Landlord's Application currently set for September 23, 2015.

### Conclusion

The Tenant's application for an Order of Possession is dismissed as he has vacated the rental unit.

The Landlord, in retaining the Tenant's personal property and vehicles, is in breach of the Act.

The Tenant, or a third party acting on behalf of the Tenant, shall be permitted to attend the rental unit on May 9, 2015 between the hours of 1:00 p.m. and 3:00 p.m. to retrieve his personal property and vehicles.

The Tenant's is entitled to recover the fee paid to file his application.

The Tenant is at liberty to apply for a further Monetary Order.

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 30, 2015

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Residential Tenancy Branch

