



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order, the return of the security deposit, and to recover the filing fee for the Application. The Tenant's application is for \$14,575.00.

Only the Tenant appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlord with the Notice of Hearing and her Application by registered mail, sent on January 12, 2015, by registered mail. Under the Act registered mail is deemed served five days after mailing. In evidence the Tenant provided a copy of the registered mail receipt. I find the Landlord has been duly served in accordance with the Act. I note that refusal or neglect to accept registered mail is not a ground for Review under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties were involved in two previous dispute hearings and the file numbers for these are on the cover page for ease of reference.

On October 15, 2014, the Landlord obtained an order of possession in the course of an early end of tenancy hearing. The order of possession was for **October 15, 2014, at 6:00 p.m.** The Tenant applied for a review consideration of this decision on October 17, 2014, and was not successful.

The Tenant made her first application in regard to these claims which was scheduled to be heard on November 3, 2014; however, the Tenant did not attend at that hearing and the matter was dismissed with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Is the Tenant entitled to the return of her security deposit?

Background and Evidence

This tenancy began on or about June 1, 2014. The Tenant testified she moved in toward the middle or end of June 2014, and that there was no written tenancy agreement. The Tenant was unsure if the rent was \$800.00, \$825.00 or \$850.00 per month. The Tenant stated she paid the Landlord a security deposit of \$425.00, although she claimed for double the security deposit in the amount of \$825.00.

The Tenant had been evicted by the Landlord and much of her claim relates to this eviction. As described above the Landlord obtained an order of possession during a hearing. The Tenant had filed for review of the order of possession, but was not successful. Throughout this hearing the Tenant claimed she was not included in the hearing which led to her eviction. She claims the eviction was unreasonable and unfounded. During the hearing I explained to the Tenant that I was unable to change the prior decision that led to her eviction, or to re-examine those issues that led to the eviction.

The Tenant claimed \$1,000.00 for gas and moving expenses. She testified that the Landlord only gave her three hours' notice to vacate the rental unit on October 15, 2014, and she had to leave that day. She testified that he told her he would get the bailiff to remove her if she did not move out. I note that the Tenant also testified during this hearing that she left the rental unit of her own accord.

In evidence the Tenant provided a rental truck receipt showing the truck was rented on October 27 and returned on October 29, 2014. The total amount of this bill is \$615.21.

The Tenant also claims for storage of her property for four months in the amount of \$800.00.

The Tenant testified she is claiming for her moving and storage fees because she did not get her chance in court and was wrongfully evicted.

The Tenant also claimed for emergency repairs to the rental unit that the Landlord did not do, despite her alleged numerous requests. The Tenant has claimed for the return of all her rent during the tenancy in the amount of \$4,250.00, because the Landlord did not make these emergency repairs.

The Tenant testified that there were holes in the walls around the pipes and that mice and rats had entered the rental unit through these. The Tenant also complained that the Landlord did not finish the painting he had promised to do in the rental unit. The Tenant further claimed that the Landlord wanted her to have sexual relations with the painter in order to reduce the bill for painting.

The Tenant also claims for \$300.00 which she alleges she paid the painter to complete the work at the rental unit. The Tenant testified she paid the painter in cash and did not get a receipt.

The Tenant claims for \$4,000.00 for emotional distress for being locked out of the rental unit, for not having the use of the car park space she was entitled to, and because she was unable to do laundry at the rental unit.

The Tenant claims \$2,400.00 for the return of her bar-b-que and her Apple computer. The Tenant alleged that the Landlord kept these saying they were to cover his court costs and fees for the eviction.

The Tenant has claimed \$200.00 for the room she rented the night she was evicted.

Lastly, the Tenant claims for the return of double her security deposit. The Tenant testified that the Landlord did not perform incoming or outgoing condition inspection reports.

The Tenant initially testified that she gave her forwarding address to the Landlord through the neighbour, and asked the Landlord to forward all her mail to this neighbour. The Tenant then testified she gave the Landlord the forwarding address in writing to the Landlord on a piece of paper. At one point the Tenant also alleged she did not give the Landlord the forwarding address in writing but told him on the phone where to forward it.

### Analysis

In an application for monetary compensation against another party, the party making the claim has the burden of proof to prove their claim.

The burden of proof in civil claims is based on a balance of probabilities.

Sections 7 and 67 of the Act provide that an Arbitrator may make an award for monetary compensation to a party who has suffered a loss. Therefore, the applicant making a monetary claim must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That this violation caused the party making the application to incur a monetary loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the claim acted reasonably to minimize the damage or loss (this is called “mitigation”).

In this instance, the burden of proof is on the Tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant acted reasonably to minimize the damage or losses that were incurred.

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

I dismiss the claims of the Tenant for gas and moving, and for her storage expenses without leave to reapply. The Landlord had a lawful order of possession and did not breach the Act when he required the Tenant to vacate the rental unit. Therefore, the cost of moving and storage are solely costs the Tenant must bear in these circumstances.

The Tenant did not attend the hearing in which she was evicted, and in the review consideration was unable to prove she could not attend due to circumstances beyond her control. These facts do not show the Landlord breached the Act, which is required for the Tenant to be successful in proving her claims.

I dismiss the Tenant's claims for emergency repairs to the rental unit without leave to reapply. Firstly, the items complained of by the Tenant do not relate the provisions in section 33 of the Act which deal with what emergency repairs consist of. More importantly, and as explained to the Tenant during the hearing, if the Tenant had

difficulties in getting the Landlord to make repairs to the rental unit, her best course of action was to file an Application requesting orders against the Landlord to make repairs to the rental unit. This should have been done during the tenancy. The Tenant had testified that she reported some of these problems to the local municipal authority, although she was unaware that she could claim for these repairs under the Act.

I dismiss the claim of the Tenant in regard to the painting she claims to have paid for without leave to reapply, as I find the Tenant had insufficient evidence to prove she paid this amount. The Tenant had no evidence to support this claim, such as an invoice or receipt from the painter.

I dismiss the Tenant claims for \$4,000.00 for emotional distress without leave to reapply, for being locked out of the rental unit, for not having the use of the car park space she was entitled to, and because she was unable to do laundry at the rental unit. As stated above, the Tenant was legally evicted by the Landlord and once she vacated he had a right to change the locks. I find the Tenant had insufficient evidence regarding a lost parking space or the inability to do laundry, in order to show these were required to be provided by the Landlord.

As for the Tenant claims of \$2,400.00 for the return of her bar-b-que and her Apple computer, I find the Tenant had insufficient evidence to prove the value of these.

However, I do find the Landlord was unable to retain these items from the Tenant.

**Therefore, I order the Landlord to immediately return to the Tenant the Apple Mac computer and her bar-b-que that he took from her. The Tenant must serve a copy of this Decision to the Landlord and the Landlord must return the computer and bar-b-que he took from the Tenant immediately.**

**If the Landlord fails to return these items he took from the Tenant, to the Tenant, she has leave to reapply for these items with suitable evidence.**

I dismiss the Tenant's claims for \$200.00 for the room she rented the night she was evicted, without leave to reapply. As set out above, the Landlord had a lawful right to evict the Tenant, and did not breach the Act. This is a cost the Tenant is responsible for.

As for the security deposit, I find the Tenant had insufficient evidence she gave the Landlord her forwarding address in writing, as required under the Act. I found her

evidence on this issue to be vague and confusing; however, I dismiss this security deposit claim with leave to reapply.

The Tenant must provide her forwarding address in writing to the Landlord as required by the Act, and should have evidence that this has been done, for example, by registered mail, along with a copy of the letter she sends to the Landlord with her forwarding address. The Landlord has 15 days from the date he is deemed to receive the registered mail to either return or claim against the security deposit. If the Landlord fails to do so, the Tenant may reapply for double the security deposit. I also caution the Tenant she should submit better evidence of what amount was paid as a security deposit to the Landlord, if she intends to proceed with this claim.

### Conclusion

Most of the Tenant's application has been dismissed without leave to reapply, for the reasons set out above. In most instances, I find that the Tenant had insufficient evidence to prove the Landlord had breached the Act. In fact, the Landlord had a lawful right to evict the Tenant as he had an order of possession.

However, I have ordered the Landlord to immediately return to the Tenant any Apple Mac computer or bar-b-que he took from the Tenant. The Landlord had no lawful right to retain these for court costs or fees, if indeed he took these.

Lastly, the Tenant must provide her forwarding address to the Landlord to return the security deposit to, as explained above. Failing to return the deposit in accordance with the Act, may cause the Landlord to have to pay the Tenant double the security deposit.

As the Tenant has only proved a small portion of her claim in this application, I do not order the return of the filing fee for the Application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 02, 2015

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Residential Tenancy Branch

