



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

This decision should be read in conjunction with the interim decision issued 16 July 2015.

### Preliminary Issue – Service of Evidence

This hearing was originally scheduled to be heard in July 2015. The hearing was adjourned because the landlord had not yet received the tenant's evidence sent by mail on or about 7 July 2015. The landlord received the tenant's evidence after the hearing, but the package did not include the photographs the tenant sent to the Residential Tenancy Branch.

As the tenant did not serve the landlord with her annotated photographs as required by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, the photographs are excluded from evidence. I informed the parties of this at the hearing.

The tenant confirmed receipt of all of the landlord's evidence at the first hearing date. In the second hearing date, the tenant stated that she did not have the second utility invoice; however, for the reasons that follow, the second utility invoice is not required for the disposition of the landlord's application.

#### Preliminary Issue – Amendment of Landlord's Application

The landlord asked to amend her application to remove a claim for utilities in the amount of \$94.97. The landlord explained that she had mistakenly included it in her claim when the invoice had already been paid by the tenant. As there is no prejudice to the tenant in the proposed amendment, it is allowed.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The parties entered into a written tenancy agreement on 18 September 2013. This tenancy began 1 October 2013. The tenancy ended 30 November 2014. Monthly rent of \$1,430.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$715.00, which was collected at the beginning of the tenancy.

Clause 14 of the tenancy agreement sets out that "Hooks, nails, tapes or other devices for hanging pictures or plants, or for affixing anything to the rental unit or residential property will be of a type approved by the landlord and used only with the landlord's prior written consent."

Clause 23 of the tenancy agreement sets out that if the carpets were professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy. The landlord provided a receipt for carpet cleaning dated 31 July 2013 in the amount of \$157.50.

On 29 October 2014, the tenant provided written notice to vacate the rental unit by 30 November 2014. The landlord advertised the unit for rent as of 1 November 2014 as available 1 December 2014.

I was provided with a copy of the condition move in/out inspection report. The move in inspection was completed on 1 October 2013. The condition move in inspection report (CMIIR) notes that the carpets were stained but professionally cleaned. The CMIIR notes that blinds needed to be installed. The move out inspection was completed on 30 November 2014. The condition move out inspection report (CMOIR) note that the unit required cleaning, that the blinds were damaged, that the tenant's belongings were left behind, and that there was writing on the floor.

The landlord provided her fees for cleaning to the tenant on or about 16 November 2014. The landlord indicated at the bottom of this letter that the tenant was to provide possession of the rental unit by 1300 on 30 November 2014. The landlord testified that this was the same date and time of the condition move out inspection. The landlord testified that the time and date was verbally agreed upon.

On 19 November 2014, the landlord wrote to the tenant:

*...upon showing the prospective tenants the rent suite, there were rooms where you could not enter into, let alone see more than a few feet of the floor, due to the massive amount of personal items in the suite/rooms. All dates listed before 16 Nov, the door to the smallest room...could not be opened more than 17" due to the boxes/piles of items behind the door. ... Both the foyer and the hall leading to the back bedroom had boxes and piles of items, making it a tripping hazard. ... On the 16<sup>th</sup> of Nov, myself nor the two prospective tenants could not gain access into the Master bedroom, due to massive piles of personal effects all over the room. In fact, only one person at a time could stand in the opening of the door to view the room, as that was the ONLY floor space available to be seen or used. ...*

*...*

*Due to the state of your suite, this may be limiting my ability to re-rent the rental unit by 01 Dec 2014. I have spoken to a few of the prospective tenants post viewing. Three of them have verbalized that they would not rent it, as they are*

*unable to see the suite, especially envision the available floor space due to all the clutter.*

The tenant suggests that it is the location of the rental unit and the neighbours' use of marijuana that caused prospective tenants to not rent the rental unit. The tenant testified that one prospective tenant informed the tenant that the rental unit was too close to the road. The tenant submits that the rental unit is "just not a great suite."

The tenant testified that she put the boxes of belongings in the bedroom so that the common areas of the rental unit could be seen.

On 22 November 2014, the tenant posted a sign on the entry way to the rental unit. The sign set out "ABSOLUTELY NO ENTRY". The tenant testified that she posted this sign as the landlord was showing the rental unit too late and it was necessary for the tenant's safety. The tenant submitted that as a childcare provider she could not have people coming through the house without knowing. The landlord discovered the sign on 22 November 2014 when she came to post a notice for entry to the rental unit for the purpose of showing. The landlord testified that prior to 22 November 2014, she showed the rental unit to 10 to 15 prospective tenants. The landlord testified that she always provided notice and denies that the showings occurred at late hours.

On 30 November 2014, the landlord found the keys and a note taped to the entrance to the rental unit. The landlord has chosen to redact portions of the tenant's note in the copy she provided to this Branch. The landlord testified that she believed that the redacted portions were irrelevant to this claim. The landlord testified that the redacted portions relate to allegations by the tenant. The note was dated 30 November 2014 and set out in part:

*I have left items you had on hold, the amount still owing is \$400. You can use this to get rid of anything you do not want.*

*...*

*Goodbye*

*Do not try to contact me*

The landlord testified that the tenant left many personal belongings behind. The landlord testified that the rental unit did not look like any attempt to clean occurred. The landlord testified that it took approximately three weeks to clean the rental unit. The landlord testified that the time of year made it difficult to find people to assist with removing the debris left by the tenant and cleaning the rental unit. The tenant testified that three weeks to clean the rental unit is a vast exaggeration.

The landlord provided me with a statement from the cleaner she used. The statement documented the extent of the cleaning performed on the rental unit. The cleaner notes that there appeared to be no effort by the tenant to clean the rental unit.

The tenant admits that she left her belongings in the rental unit. The landlord provided a written statement from AC. AC notes that the tenant left approximately thirty boxes of belongings in the rental unit. AC notes that the tenant also left the following furnishings:

The landlord provided a receipt for carpet cleaning dated 30 November 2014. The invoice is in the amount of \$141.75. The tenant admits to agreeing to carpet cleaning in the amount of \$141.75.

The landlord seeks recovery of costs associated with cleaning the rental unit:

- The landlord provided an invoice for cleaning dated 4 December 2014. The invoice is in the amount of \$162.50. The landlord provided a second invoice for cleaning dated 21 December 2014. The invoice is in the amount of \$312.50.
- The landlord provided an invoice for her cleaning labour dated 3 December 2014. The invoice is in the amount of \$100.00.
- The landlord provided a receipt for cleaning the carport dated 20 December 2014. The invoice is in the amount of \$50.00.

The landlord seeks recovery of costs associated with sorting, itemizing, and valuing the abandoned items:

- The landlord submitted an invoice for her time on 1 and 2 December 2014. The invoice documents 12 hours of sorting abandoned property. The receipt is in the amount of \$240.00.
- The landlord submitted an invoice for labour provided on 1 December 2014. The labour is in relation to sorting and itemizing abandoned property. The invoice is in the amount of \$260.00.
- The landlord submitted an invoice for labour provided on 2 December 2014. The labour is in relation to sorting and itemizing abandoned property. The invoice is in the amount of \$60.00.

The landlord seeks recovery of labour costs associated with hauling the abandoned items from the rental unit:

- The landlord provided a receipt for moving labour on 2, 6, and 13 December 2014. The receipt is in the amount of 168.00 for 12 hours of labour.
- The landlord provided a receipt for moving labour on 6 December 2014. The receipt is in the amount of \$70.00. The landlord provided another receipt for moving labour on 13 December 2014. The receipt is in the amount of \$148.00.

- The landlord provided receipt for transport of the abandoned property on 14 December 2014. The receipt is in the amount of \$240.00.

The landlord rented a truck from a friend for hauling the abandoned items. The landlord provided a receipt for an invoice for a truck rental. The receipt is for \$100.00 for use of the truck on both 6 and 13 December 2014. The landlord provided a receipt dated 7 December 2014 for gas and a car wash. The receipt totals \$67.34. The landlord testified that this gas was for six trips to the landfill. The landlord testified that four of these trips were in respect of the tenant's belongings. The landlord seeks recovery of \$44.89. The landlord provided a receipt dated 14 December 2014 in the amount of 43.61 for gas. The tenant disputes that it would take that much gas to go the disposal site. The tenant testified that the site is approximately five minutes away.

The landlord provided receipts for dumping fees in the amount of \$23.44, \$26.25, \$19.91, \$31.96. The receipts are dated 6 and 13 December 2014.

The landlord testified that the tenant caused there to be approximately 64 holes in the walls. The landlord testified that this is an excessive number of holes and as a result repairs were required to the rental unit. The landlord provided a receipt for repairs to the walls dated 29 December 2014. The invoice is in the amount of \$120.00.

The landlord testified that the blinds in three different rooms were badly damaged at the end of the tenancy. The landlord provided me with photographs that showed the same. The landlord provided a receipt for replacement blinds dated 30 December 2014. The invoice is in the amount of \$171.22. The landlord testified that the blinds were new at the beginning of the tenancy. The landlord provided a receipt for the original blinds. The original blinds cost \$180.18.

The tenant submits that any damage was the result of wear and tear.

The landlord testified that she stored the tenant's belongings in her garage. The landlord testified that as a result of the tenant's belongings taking up her garage, the landlord had to park her car in the street. The landlord submitted a claim for \$200.00 as compensation for her storing the tenant's belongings in the landlord's garage. The tenant submits that the landlord's request for \$200.00 for storage is excessive.

The landlord testified that she sold the abandoned items. The landlord testified that she received \$116.00 from the sale of the tenant's items by way of a garage sale. The remaining items were disposed. The landlord provided a receipt for the disposal of the

tenant's abandoned items from storage. The receipt is dated 5 February 2015 and is in the amount of \$350.00

The landlord provided a receipt dated 28 January 2015 in the amount of \$94.58. The expense is in relation to a newspaper advertisement for the disposition of the abandoned property.

The landlord seeks recovery of a utility invoice for December 2014. The landlord admitted on cross examination that she did not provide this utility invoice to the tenant in advance of this application and had not made a prior demand for payment.

The landlord provided me with photographs of the rental unit taken in November 2014 and after the end of the tenancy. The photographs corroborate the landlord's testimony. The photographs taken at the end of the tenancy document the large quantity of debris (including large items of furniture) the tenant left behind. The photographs also document the lack of end of tenancy cleaning that occurred. The photographs show the damage to the venetian blinds as well as to the walls.

The photographs taken in November 2014 show the unit in a state of disarray; in particular:

- The outside deck is piled with children's toys;
- The small bedroom is full of belongings and has items piled behind the door that prevent it from opening fully;
- The master bedroom has a trail of floor space between piles of belongings; and
- The hallway has only a narrow path for walking and is partially blocked by boxes and piles of books.

The landlord claims for \$3,593.61:

Item	Amount
Cleaning Rental Unit	\$766.75
Removing Ppt From Rental Unit	916.06
Damage to Unit	291.22
December Rent Loss	1,430.00
Sorting and Itemizing Abandoned Ppt	560.00
Storage of Ppt for 60 Days	200.00
Notice of Disposition	94.58
Removal of Ppt from Storage	350.00
Utilities	166.00
Security Deposit	-715.00

Payment Due Tenant	-400.00
Garage Sale Proceeds	-116.00
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$3,593.61</b>

### Analysis

The landlord seeks a total monetary order in the amount of \$3,593.61. Applications for monetary orders, such as the landlord's, are governed, among others, by section 67 of the Act. Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

### *Tenant's Failure to Clean Rental Unit and to Remove Belongings*

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

*Residential Tenancy Policy Guideline*, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant's responsibilities:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*...

[footnote removed]



The landlord claims \$766.75 for cleaning costs. This includes:

Item	Amount
Carpet Cleaning	\$141.75
3 December 2014 Cleaning	100.00
4 December 2014 Cleaning	162.50
20 December 2014	50.00
21 December 2014 Cleaning	312.50
<b>Total Cleaning Costs</b>	<b>\$766.75</b>

Guideline 1 states:

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The landlord provided me with a receipt for that shows the carpet was professionally cleaned at the beginning of the tenancy. I find that the tenant and landlord agreed in the tenancy agreement that the carpets will be professionally cleaned at the end of the tenancy. The tenant admits that she did not clean the carpets at the end of the tenancy and admits her liability for this amount. Accordingly, I find that the landlord is entitled to recover the carpet cleaning costs from the tenant from the tenant.

The landlord provided me with many photographs that indicate that the tenant did not return the rental unit to the landlord in condition that complies with the tenant's obligations pursuant to subsection 32(2) or section 37 of the Act. In particular, it does not appear from the photographs that any effort was extended by the tenant to clean the rental unit. On this basis, I find that the tenant has breached subsection 32(2) and section 37 of the Act. Further the photographs show that the rental unit would have required substantial cleaning in order to bring the unit into compliance with the Act. The tenant had allowed her child to colour on the windows and it appeared that no effort had been extended by the tenant to clean the rental unit. On this basis, I find that the landlord's testimony that is corroborated by the photographic evidence indicates that the landlord was justified in her cleaning costs. Accordingly, I find that the landlord has proven her entitlement to her claimed cleaning costs: \$766.75.

The landlord claims \$916.06 for removing the tenant's discarded belongings. This includes:

Item	Amount
2/6/13 December 2014 Moving	\$168.00
6 December 2014 Moving	70.00
13 December 2014 Moving	148.00
14 December 2014 Moving	240.00

6/13 December 2014 Truck Rental	100.00
7 December 2014 Gas / Car Wash	44.89
14 December 2014 Gas	43.61
6 December 2014 Dump Fees	23.44
6 December 2014 Dump Fees	26.25
13 December 2014 Dump Fees	19.91
13 December 2014 Dump Fees	31.96
<b>Total Cleaning Costs</b>	<b>\$916.06</b>

Guideline 1 sets out the responsibility for garbage removal from a rental unit:  
 Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The tenant failed to clean out the rental unit of her belongings. The tenant left a note to the landlord telling the landlord to dispose of the tenant's garbage. The landlord provided photographs of the large volume of debris the tenant left behind. Pursuant to Guideline 1, it is the tenant's obligation to remove garbage at the end of the tenancy. It is clear that the tenant failed to do this. The tenant specifically attempted to shift the responsibility to the landlord by telling her to dispose of the property. The landlord did dispose of the debris and incurred costs as a result. The landlord has provided detailed receipts of the costs associated with the removal. On balance, I prefer the testimony of the landlord on this topic as I found her to be credible. I find that, the landlord has proven her entitlement to the cost of removing the debris left in the rental unit: \$916.06.

### *Damage to Rental Unit*

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord claims for damage totaling \$291.22. The landlord claims \$120.00 for repairing nail holes in the walls and \$171.22 for replacing the blinds.

Guideline 1 provides helpful instruction in determining the landlord's claim for the nail hole repairs:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

The landlord testified that the tenant caused there to be approximately 64 holes in the walls. The landlord submits that this is an excessive number of holes and as a result repairs were required to the rental unit. I find that 64 holes is an excessive number of holes. As the number of holes was excessive, the tenant was responsible for their repair as the tenant caused this damage and as a result breached section 37 and subsection 32(3) of the Act. The landlord's costs for repair of \$120.00 are reasonable. On this basis, the landlord is entitled to recover the full cost of these repairs.

The photographic evidence provided by the landlord indicates that the blinds were badly damaged. This damage does not appear to be the sort that would arise from wear and tear. The slats are completely broken off. Furthermore, the blinds were new at the beginning of the tenancy and the tenant did not provide any evidence that the blinds were particularly susceptible to this sort of wear. I find that the tenant caused this damage to the blinds and in doing so breached section 37 and subsection 32(3) of the Act.

*Residential Tenancy Policy Guideline* “40. Useful Life of Building Elements” provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of venetian blinds is ten years. The landlord provided a receipt that indicates that the blinds were one year old. As such, the capital value of the carpet had depreciated by 10%. On this basis, I find that the landlord is entitled to recover 90% of the cost of the blinds replacement: \$154.10.

### *December Rent Loss*

The landlord claims for her rent loss for December 2014. The landlord says that as a result of the excessive clutter in the rental unit as well as the tenant’s sign posted 22 November 2014, the landlord was unable to secure a new tenant for 1 December 2014.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The landlord provided photographs of the rental unit from November 2014. The photographs show certain rooms are extremely cluttered. There are boxes stacked into the room to such an extent that it was difficult to enter the room. In one photograph master bedroom only has a pathway to the bed—the remainder of the room is filled with the tenant’s belongings. The clutter continues into the outside of the rental unit. The back deck is completely full of the tenant’s belongings. The rental unit as the tenant kept it was unsightly. I find that the tenant did not meet the cleanliness standards required by subsection 32(2) of the Act as a result of her excessive clutter.

The landlord testified that prospective tenants stated that they were unable to visualise the rental unit because of the tenant’s clutter and as a result did not rent the unit. The tenant submits that the rental unit did not rent for December as it was not a “great suite”. Neither the tenant nor the landlord elect to call as witnesses any of the prospective tenants that would support either version of events; however, the landlord did provide a copy of her letter dated 19 November 2014, which puts the tenant on notice of this claim. The tenant chose to not remedy the complaint and in fact worsened the situation by later denying entry. On the basis of the early notice, I find that the landlord has shown that at least some tenants did not rent the unit because of the tenant’s clutter. I find that by showing this, the landlord has proved a causal nexus between the tenant’s breach of subsection 32(2) of the Act and her loss.

Section 29 of the Act addresses a landlord's right to enter a rental unit. It states that a landlord must not enter a rental unit for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of entry or not more than 30 days before the entry; or
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering, and the date and time of entry.

The tenant admits that she posted a sign barring entry to the landlord, but said that it was required to preserve her safety. The landlord testified that did not enter the rental unit unless she provided appropriate notice to the tenant. The tenant has not provided any corroborating evidence that indicates that the landlord entered the rental unit improperly. I find that by posting the sign on or about 22 November 2014, the tenant blocked the landlord's ability to show the rental unit. Pursuant to section 29 of the Act, the landlord was entitled to enter the rental unit. As such, the tenant interfered with the landlord's lawful right to enter the rental unit for the purpose of showing the rental unit to prospective tenants and in doing so breached the Act.

While it is impossible to say with any certainty that this interference caused the landlord's loss, I find that by doing so, it is more likely than not that the tenant eliminated any chance of re rental and as a result guaranteed the rental loss for December. On this basis, I find that there is sufficient causation for the purpose of section 67 of the Act.

In any event, the landlord provided evidence that extensive work was required to bring the rental unit into rentable standards after the tenant left the unit unclean and full of debris. I find that the wanting condition in which the tenant left the rental unit would have completely prevented the landlord from renting the unit for December.

I find that the tenant's breaches of sections 29, 32, and 37 alone and in combination caused the landlord's rental loss for December. I accept that the work required was extensive and that the earliest possible time for re rental was 1 January 2015. On this basis, I find that the landlord mitigated her losses pursuant to subsection 7(2) of the Act.

The landlord is entitled to the rental loss in the amount of \$1,430.00 for December.

### *Costs Associated with Abandoned Property*

The landlord claims \$916.06 for the costs associated with dealing with the tenant's abandoned property. This includes:

Item	Amount
Sorting and Itemizing Abandoned Ppt	\$560.00
Storage of Ppt for 60 Days	200.00
Notice of Disposition	94.58
Removal of Ppt from Storage	350.00
<b>Total Abandoned Ppt Costs</b>	<b>\$1,204.58</b>

Paragraph 24(1)(a) of the Residential Tenancy Regulation (the Regulation) sets out that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended.

In this case, the tenant intentionally abandoned her property. The tenant specifically set out that she intended the landlord to dispose of the tenant's property. "Abonnement" in its ordinary sense includes intentional abandonment or "dereliction". On this basis, I find that the property left behind was "abandoned property" within the meaning of the *Residential Tenancy Regulation* (the Regulation). Pursuant to subsection 24(4) of the Regulation, these provisions would have not applied had the tenant and landlord made a specific agreement to the contrary respecting the storage of personal property. There was no such agreement. In this case the tenant merely made a declaration of her intent to have the landlord deal with it.

Pursuant to subsection 25(1) of the Regulation the landlord:

- stored the tenant's personal property in a safe place and manner for sixty days; and
- kept a written inventory of the property.

The landlord posted a notice of disposition pursuant to paragraph 27(2)(b) of the Regulation.

Pursuant to subsection 25(2) of the Regulation a landlord may dispose of the tenant's abandoned property where:

- (a) the property has a total market value of less than \$500, or
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale.

The landlord used her best guess to determine the market value of the itemized list of the abandoned property. The landlord arrived at a value of \$874.00. This value is grossly unreasonable given the tenant's specific assertion that the goods were of no value and should be disposed. Further, the proceeds of sale from the goods were \$116.00. Additionally, the landlord ought to have known that the cost of removing storing and selling the property would be more than the proceeds of sale. The actual costs associated with removing storing and selling the property was over \$1,200.00. The proceeds of sale were \$116.00 or less than 10% of the costs. The landlord is entitled to use her discretion; however, she is not entitled to exercise that discretion in a grossly unreasonable manner. I find that by failing to dispose of the property in a commercially reasonable manner, the landlord has failed to mitigate her losses. I find that the landlord is entitled not entitled to recover her costs associated with dealing with the abandoned property.

### *Utilities*

The landlord failed to present the tenant with a demand for payment of the utility invoice. The tenant could only know to pay the invoice after being provided with such a demand. As such, I decline to award the landlord the amount of the utilities as her claim is premature. The landlord is at liberty to reapply for this amount should the tenant fail to pay the invoice within a reasonable time of being provided with the invoice and a demand for payment.

### *Retain Security Deposit*

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

### *Offset Proceeds*

The landlord mitigated her losses by selling some of the tenant's abandoned property. These amounts are properly offset against the landlord's monetary award.

Further, the landlord had agreed to pay the tenant \$400.00 for certain items the tenant left behind. The landlord has asked that I offset this amount from the landlord's award. I have done so.

### *Filing Fee*

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,205.91 under the following terms:

<b>Item</b>	<b>Amount</b>
Cleaning Rental Unit	\$766.75
Removing Ppt From Rental Unit	916.06
Damage to Unit	274.10
December Rent Loss	1,430.00
Security Deposit	-715.00
Payment Due Tenant	-400.00
Garage Sale Proceeds	-116.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,205.91</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 28, 2015

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Residential Tenancy Branch