



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

On July 30, 2015 the original arbitrator adjourned the tenant's application to allow the landlord to re-serve the tenant with their documentary evidence.

On October 15, 2015, the hearing was reconvened with a new arbitrator to conduct the hearing for the tenant's application for dispute resolution.

Both parties attended the reconvened hearing by conference call and confirmed that the landlord had served the tenant with their documentary evidence.

During the hearing the tenant stated that she no longer wanted the items (51" T.V. and a lawnmower) currently stored by the landlords as noted in the interim decision. The tenant stated that the landlords were free to dispose of the items as they like. As such, these portions of the tenant's monetary application are withdrawn and require no further action. The tenant's monetary claim is amended from \$6,000.00 to \$4,950.00.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of her filing fee?

### Background and Evidence

This tenancy began on February 14, 2014 on a fixed term tenancy ending on February 14, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated February 15, 2014. The monthly rent was \$865.00 payable on the 1<sup>st</sup> day of each month. No security deposit was paid.

The tenant stated that she was served with a 10 Day Notice to End Tenancy dated June 2, 2014 and issued for Unpaid Rent on June 2, 2015. The tenant stated that she voluntarily vacated the rental unit on June 12, 2015. The tenant stated that in vacating the rental property she left many years' worth of belongings in the property. The tenant stated that after vacating the rental property no further communication was made with the landlord. The tenant later stated that the 6 bags of clothing were damaged and had to be thrown away due to rain.

The landlord, S.M. (the landlord) stated that possession was gained on June 16, 2015 when the landlord discovered that the tenant had vacated the rental property without notice. The landlord stated that she took pictures on June 17, 2015 of the rental unit as left by the tenant to show the condition at the end of the tenancy. The landlord also relies on a signed written statement of another tenant, C.C. who occupies the upstairs unit on the rental property. C.C. stated that she witnessed the tenant pack up her belongings into their truck and camper on June 10, 2014. C.C. also witnessed the condition of the basement rental unit on June 17, 2014 stating that she was present when the landlord took possession on June 17, 2014 and that the tenants had not been at the rental property since June 14, 2014. C.C. stated,

I witnessed the condition of the downstairs suite once the landlords were in and it was definitely abandoned. There was barely any furniture in the house and there was garbage everywhere. The smell in the suite was terrible, predominantly animal urine and faeces throughout as well cigarette smoke damage. The landlords informed that they had stored 6 plus bags of clothing and other belongings left behind in the storage unit beside the basement if K. of D. came by the house at any point. I was there when K. and D. both showed up the next night and collected the items left in the storage until.

The tenant seeks an amended monetary claim of \$4,990.00 which is compensation for items left at the rental property. They consist of:

6 bags of clothes X \$200/bag	\$1,200.00
Shark vacuum	\$170.00

Q.S. Mattress and Frame	\$1,000.00
Single Boxspring/frame/mattress	\$400.00
Electric fireplace insert	\$50.00
Paint/brushes/tray	\$50.00
51" T.V.	\$1,000.00 (Removed from Claim)
Two 26" T.V.'s	\$300.00
Lawnmower	\$50.00 (Removed from Claim)
Memory foam (single)	\$50.00
Condiments in 5 shelf pantry	\$200.00
Condiments in Fridge	\$50.00
Old barbeque (still worked)	\$50.00
Daughter's school awards	\$100.00 ?
Daughters closet items	\$100.00 ?
Laundry soap/bounce and kitchen	
Cleaners	\$100.00
Tools (outlined in testimony)	\$500.00
"Next Bicycle (and parts)	\$100.00

The tenant stated that she has not replaced any of the items and that the prices for the named items were estimates based upon her looking at similar items while shopping at a store. The tenant provided no documentary evidence to support her monetary claim.

The landlords disputed the tenant's claims stating that the only items of value that were left were of the 51" TV and the lawnmower which were abandoned by the tenant. The landlords also stated that the weather following the end of tenancy on June 12, 2014 were good and with no rain.

### Analysis

Section 24 of the regulations state that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that the landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if 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.

I find on a balance of probabilities based upon the undisputed testimony of both parties that the tenant vacated the rental unit on June 12, 2014. It is clear based upon the undisputed affirmed testimony of the tenant that no communication was made between the tenant and the landlords for the tenant's notice to the landlord that she was vacating

the rental unit. I find it reasonable that the landlords believed that the tenant abandoned the rental unit and the leftover items.

Section 25 of the regulations state that the landlord must: store the tenant's personal property for period not less than 60 days following the date of removal; keep a written inventory of the property; keep particulars of the disposition of the property for 2 years following the date of disposition; and advise the tenant who requests the information either that the property is stored or that it has been disposed of. However, the landlord may dispose of the property in a commercially reasonable manner if the landlord believes: that the property is less than \$500.00 in market value; the cost of removing, storing, and selling the property would be more than the proceeds of its sale; or the storage of the property would be unsanitary or unsafe.

I find that the landlords failed to adhere to section 25 by keeping a written inventory of the property. However, it is clear based upon the landlords testimony that the tenant abandoned the property without notice and failed to communicate with the landlord over that contents of the tenant's remaining items left at the rental unit. The landlord has provided affirmed testimony that after the locks were changed and the rental unit cleaned, the garbage was removed and any remaining items were stored that were of \$500.00 or more in value. The bags of clothing were witnessed by the other tenant being removed by the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find based upon a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant has failed to provide sufficient evidence to satisfy me that the landlord caused the loss of the abandoned items. This is disputed by the landlord that some of the items were already damaged by the tenant's pet. The tenant has also failed to provide sufficient evidence of the actual amount of loss for the items claimed. The tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed.

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: October 26, 2015

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Residential Tenancy Branch

