



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP

### 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; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

The tenant attended the hearing. The tenant provided his testimony through an interpreter. The landlord's agent attended the hearing and confirmed he had full authority to act on behalf of the landlord. Both parties 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.

The landlord confirmed receipt of the tenant's dispute resolution package.

The agent testified that he sent the landlord's evidence by mail to the tenant. The agent testified that the evidence was sent to the tenant on 16 October 2015. The landlord provided me with a tracking number and tracking information. The tenant did not retrieve the mailing before the hearing date. In accordance with sections 88 and 90 of the Act and rule 3.15 of the Rules of Procedure, I find that this evidence was deemed served to the tenant on 21 October 2015 and within the prescribed time limit.

### Preliminary Issue – Unsworn Statements from Tenant's Partner

The tenant's partner (the partner) interrupted the teleconference part way through the hearing and made various statements. The partner indicated that she was leaving and would not remain on the conference call.

The partner was not sworn in and the agent did not have the opportunity to cross examine the partner. I informed the parties that statements from the partner were not sworn testimony and would not be used as evidence in this application. On this basis, the unsworn and untested statements of the partner are not included as evidence.

### 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? Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

### 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 tenant's claim and my findings around it are set out below.

This tenancy began in December 2014. Monthly rent of \$950.00 was due on the first.

The tenant testified that he paid rent for May 2015 and that he dropped off his rent in the mailbox. The tenant testified that he tried to get a hold of one of landlord's agents to pay June's rent, but could not contact the agent. The tenant admitted that he did not pay rent for June.

The agent testified that the property manager was told that the tenant was moving out of province for work. The agent testified that the tenant was asked to provide his notice to end the tenancy, but none was provided.

The agent testified that, on or about 5 June 2015, the landlord went to the rental unit and found the door open and substantially all of the tenant's belongings removed. The agent testified that no items of value remained. The agent testified that he believed the belongings that remained had an estimated value of no more than \$100.00. The agent testified that the landlord secured the rental unit with new locks on 20 June 2015 and prior to this date the door was secured with a chain. The agent denies that the landlord or his agents are in possession of any of the tenant's belongings.

The tenant testified that he left the province on or about 26 May 2015 for approximately one week. The tenant testified that he frequently left the province for work. The tenant testified that the "young" landlord was aware that he worked out of the province.

The tenant testified that when he returned the rental unit was locked with a chain and he could not gain entry. The tenant testified that his personal property was missing. The tenant testified that he called the landlord many times when he found the rental unit locked. The tenant testified that he delayed filing his application until mid August because he was very busy.

The tenant claims for \$13,000.00 as compensation for his missing personal property. The tenant testified that he is missing items such as gold from his mother, a laptop computer, a television, expensive clothing, and family photographs. I was not provided with a list of items that are purportedly missing. The tenant did not provide any photographs or receipts in respect of the missing items.

The landlord denies the allegations as set out in the tenant's claim. In the alternative, the landlord submits that the tenant has not provided any evidence to substantiate his claim of \$13,000.00 in losses.

### Analysis

Subsections 26(3) and (4) of the Act sets out that a landlord must not seize any personal property of a tenant or prevent or interfere with a tenant's access to a tenant's personal property unless the landlord has a court order authorizing the action or the rental unit is abandoned.

There is no definition or legislative guidance in the Act of when a tenant has abandoned a rental unit.

The *Residential Tenancy Regulation* (the Regulation) provides guidance on when personal property is considered to be abandoned:

24(1) A landlord may consider that a tenant has abandoned personal property if

...

(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 ...

I find the Regulation provides guidance as to the types of factors that an arbitrator should consider in determining whether a rental unit has been abandoned. In particular, I should consider whether the tenant appears to be occupying the rental unit, whether the tenant has paid rent, whether the tenant has removed substantially all of his or her personal property, and the express intentions of the tenant.

In this case, the agent testified that the tenant told the property manager that he was moving out of the province, the rental unit was empty except for a few belongings, and the tenant had not paid rent. The tenant testified that he told the property manager that he was leaving for a short time and that he attempted to pay rent but could not contact the landlord or his representatives. The tenant alleges that it is the landlord or his representatives that took the tenant's belongings. The agent denies this with the exception of some small items that the landlord discarded.

The tenant has not provided any evidence other than assumption that it was the landlord that removed the tenant's belongings from the rental unit. The tenant was not in the province when his belongings were removed. I have not been provided with any witness statements or other evidence that would suggest that it was the landlord or his agents that removed the tenant's belongings from the rental unit. I find that the tenant has failed to show, on a balance of probabilities, that it was the landlord that removed substantially all of the tenant's belongings from the rental unit. I accept the agent's testimony that the landlord is not in possession of any of the tenant's belongings and, thus, cannot return them.

The agent admitted that the landlord disposed of some of the tenant's belongings. The agent testified that these belongings had little value. On the basis of this evidence and on a balance of probabilities, I find that the landlord was justified in considering the rental unit abandoned when the rental unit was discovered unlocked with substantially all of the contents removed. Pursuant to paragraph 26(4)(b) of the Act, the landlord was entitled to deal with the remainder of the tenant's personal property in accordance with the Regulation.

I find that the landlord was justified in considering that the tenant had removed substantially all of his belongings from the rental unit when the landlord's agents attended at the rental unit and found it unlocked and empty. The tenant testified that he did not express that he was vacating the rental unit. The agent testified that the tenant told the property manager he was vacating the rental unit and the property manager

asked the tenant to provide written notice. I find the testimony of the agent more credible than that of the tenant. I find that the tenant indicated that he was vacating the rental unit and would not be returning. On this basis, I find that the criteria set out in subparagraph 24(1)(b)(ii) and paragraph 24(2)(a) of the Regulation have been met and the landlord was entitled to consider the tenant's personal property that remained in the rental unit abandoned.

Paragraph 25(2)(a) of the Regulation sets out that a landlord may dispose of the tenant's abandoned personal property with a total market value of less than \$500.00. The agent testified that the remaining items in the rental unit had a value of less than \$100.00. On the basis of the evidence available to me, I find that the remaining items had a value of less than \$500.00 and, on this basis, the landlord was entitled to dispose of the tenant's remaining belongings.

The tenant has failed to show that the landlord acted improperly in dealing with the rental unit or the tenant's personal property. The tenant is not entitled to any of the relief claimed. The tenant's application is dismissed without leave to reapply.

#### Conclusion

The tenant's application is dismissed without leave to reapply.

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: November 30, 2015

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Residential Tenancy Branch

