



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed their Application requesting a monetary order for damage to the rental unit; for unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, legislation or tenancy agreement; and to recover the cost of the Application for the hearing.

The Tenant filed for a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing 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.

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 and Procedural Matters

On June 13, 2016, I issued an Interim Decision to adjourn the hearing to a future date to allow the parties more time to respond to the evidence, and I ordered the Landlord to provide the Tenant and the Residential Tenancy Branch a breakdown of her claim for \$10,500.00. The parties were given set dates to provide any written response to the evidence that was served on them.

The Landlord submitted a monetary order worksheet to break down her claim and an additional 21 pages of receipts that were not provided for the first hearing.

The Tenant testified that he has received the Landlord's monetary order worksheet and evidence. The Tenant testified that he sent his response to the Landlord. The Tenant did not provide a copy of his response to the Residential Tenancy Branch and I do not have a copy of

the Tenant's written response before me. The Tenant testified that he believed his Application had been dismissed so he reapplied for another hearing by completing another Application for Dispute Resolution and provided his five page response to the Landlord's evidence as evidence for that Application.

My oral instruction to the parties during the hearing on June 13, 2016, was clear that the hearing was being adjourned and not cancelled. My Interim Decision that was sent to the parties was clear that the hearing was adjourned to another time. In considering the Tenant's actions of failing to comply with the Interim Decision, along with the possibility of another adjournment, I decided to proceed with the hearing. Another adjournment would be prejudicial to the Landlord's desire to have the matter decided. The evidence issue was caused by the Tenant's neglect. The Landlord has received the Tenant's evidence and the Tenant has the opportunity to testify to his written evidence during the hearing.

The Tenant submits that when the Landlord initially applied for the hearing and served her evidence, she only provided a few receipts as proof of her claim. He submits that when the Landlord provided a breakdown of her claim, she also provided more receipts. The Tenant points out that the Landlord could have provided the additional receipts earlier as the police report indicates she told police she had located the receipts. The Tenant also submits that the Landlord waited 18 months before making application for dispute resolution and the Tenant questions why the Landlord would wait such a long time. The Tenant submits that the Landlord's claim was initially \$10,500.00 but that Landlord's recent statements indicate she is claiming \$14,000.00

I find that the Landlords monetary claim within the Application that was served on the Tenant indicates the amount of \$10, 500.00. I accept the receipts provided by the Landlord, as she testified in the hearing to the cost of the items; however, I do not allow the amount claimed to be amended to a higher amount than \$10,500.00.

#### Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to the monetary relief sought for damage to the unit?
- Is the Landlord entitled to the monetary relief sought for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement?
- Is the Tenant entitled to monetary relief sought for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement?

### Background and Evidence

The Parties testified that the tenancy began on October 1, 2012, as a 1 year lease that continued thereafter as a month to month tenancy. Rent in the amount of \$1,480.00 is to be paid on the 1<sup>st</sup> day of each month. The Tenant paid the Landlord a security deposit in the amount of \$740.00. The Landlord returned the security deposit to the Tenant on March 8, 2013.

The Landlord provided documentary evidence that the parties participated in a previous Dispute Resolution hearing on October 29, 2013. The Arbitrator recorded a settlement agreement decision that states:

- The parties have agreed to end the tenancy effective January 7, 2014.
- The Tenant agrees to pay the Landlord \$334.18 for 7 days of rent.
- The Tenant will not pay any rent for the period of December 2013, through January 7, 2014.
- The parties shall treat each other respectfully for the duration of the tenancy.

As a result of the settlement, the Arbitrator dismissed the Landlord's application for a monetary order and cancelled the 2 Month Notice to End Tenancy dated July 23, 2013. The 2 Month Notice had an effective date of September 30, 2013. The Arbitrator granted the Landlord an order of possession effective January 7, 2014, at 1:00 PM. For ease of reference the file number for this previous hearing is reproduced on the cover page of this decision.

The Landlord testified that she provided the Tenant with a furnished rental unit. The Landlord provided a copy of the tenancy agreement that was signed by the Tenant on September 21, 2016. The tenancy agreement indicates the rental unit is furnished. Page 2 of the tenancy agreement indicates that furniture was included in the rent and indicates that a furniture list is attached to the agreement. The Landlord provided a copy of the furniture list which itemizes all the furniture that was provided to the Tenant. The tenancy agreement and the furniture list is dated and signed by the Landlord and the Tenant.

The Landlord testified that on January 7, 2014, at 1:00 PM, she went to the rental unit to take possession of it. She testified that she knocked on the door and nobody answered. She testified that the door to the rental unit was locked, so she broke the lock and entered the house and noticed that all of her furniture was missing. She testified that she took a look through the house and then called the police. She testified that she also called the Tenant but there was no answer.

The Landlord testified that she did not observe the Tenant moving out. She also testified that the Tenant never returned the keys to the rental unit to her.

The Landlord testified that the police investigated the matter. The Landlord requested a copy of the police report and she has provided a 56 page report from the R.C.M.P. documenting that she reported the theft of her possessions on January 7, 2014. Page 15 of the police report states that the Landlord told the investigating officer that the last time she saw all the furniture

present was when the city conducted an inspection during August of 2013. The Police report contains an itemized list of the furniture that was stolen. The police report indicates that on March 12, 2014, the Landlord was informed that the Crown was not willing to pursue the charges against the Tenant, but that she could pursue the matter civilly.

#### The Landlord's Claim

The Landlord is claiming \$10,500.00 for damage to the rental unit; for unpaid rent; and for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement.

The Landlord is claiming compensation to replace the following items that she alleges were stolen by the Tenant some time before 1:00 pm on January 7, 2014. The Landlord provided testimony on the age of the items.

The age of the items were rounded up or rounded down to the nearest year

ITEM	ITEM PURCHASED	AGE OF ITEM	CLAIM
Dining room table and 6 chairs	December 2011	2 years	\$783.99
Television West LD 32651	December 2011	2 years	\$249.99
Television Samsung 42"	December 2011	2 years	\$497.99
Television Sony 32"	December 2011	2 years	\$379.99
Shaw Cable Box x2	Rented from Shaw	N/A	\$221.76
Ikea Sofa Bed	2004	10 years	\$279.00
Lamps x 2 Home Depot	2005	9 years	\$39.96
Queen size bed frame	December 2012	1 year	\$299.00
Duvets x 3	September 2012	1.4 years	\$149.97
Pillows x4	April 2012	3 years	\$15.78
Mattresses x 2	September 2010	3 years	\$2077.80
Bedding	February 2011	3 years	\$170.70
Night Table	November 2011	2 years	\$139.98
Night Table	unknown	unknown	\$99.99
Desk x 2	2012	2 years	\$299.98
Chairs x 3	2012	2 years	\$89.97
Sofa	2004	10 years	\$2999.99
Bed frame	2011	2 years	\$249.00
Coffee table	2004	10 years	\$199.00
Clock Radio	2012	2 years	\$22.53
Microwave Toshiba	2007	6 years	\$100.00
DVD Player	2005	9 years	\$80.00

In response to the Landlords claims for the furnishings, the Tenant testified that the Landlord should not have entered the rental unit because she needs a writ of possession from the Supreme Court in order to enter the rental unit. The Tenant testified that he left a note on the rental unit door stating that he needs more time to move out.

The Tenant testified he was surprised when he moved into the unit that it was furnished. He testified that because the rental unit was furnished, he needed to put his furniture in storage. The Tenant testified that when he was moving out of the rental unit he used a truck and a mobile storage container for his furniture and belongings. The Tenant then explained that during the tenancy he asked the Landlord to remove the Landlord's furnishings and the Landlord removed all of her furnishings on March 8, 2013. The Tenant stated that after the Landlord removed her possessions, he moved all of his furniture and possessions into the rental unit. The Tenant only provided two pages of the tenancy agreement. One page indicates that the security deposit was returned on March 8, 2013. The other page indicates the Tenant signed the tenancy agreement on October 1, 2013.

In response, the Landlord testified that there was no note left on the door of the rental unit when she arrived to take possession on January 7, 2014. The Landlord testified that she did not remove any of the furniture from the rental unit during the tenancy. The Landlord stated that if she removed all of her furnishings on March 8, 2013, as alleged by the Tenant, then why was there still some of the Landlord's furniture in the rental unit on January 7, 2014. The Landlord testified that there was a television, a table, and a bedframe and mattress remaining in the rental unit on January 7, 2014.

#### Painting Cleaning and Repair

The Landlord is claiming the amount of \$4,500.00 for the cleaning, painting and repair of the rental unit after the Tenant vacated the rental unit. The Landlord testified that the Tenant left lots of garbage in the rental unit. The Landlord testified that she has only provided two pictures showing garbage in the unit and that she has not provided any photographic evidence showing damage to the rental unit.

In response to the Landlord's claim for cleaning painting and repair of the unit the Tenant testified that the Landlord has not provided any evidence showing any repairs or damage. He testified that the Landlord did not allow him to finish cleaning. The Tenant testified that he left a note attached to the door stating that he needed more time to move out. The Tenant submits that the Landlord did not conduct a move in or move out inspection of the rental unit. He submits that the Landlord's claim for \$4,500.00 has no merit.

In response the Landlord testified that she did not arrange or conduct a move in or move out inspection with the Tenant.

### Unpaid Rent

The Landlord is claiming the amount of \$334.18 for one week of rent that was agreed upon by the parties in the earlier dispute resolution hearing.

The Tenant did not provide any testimony in response to the Landlord's claim for the unpaid rent.

### The Tenants' Claims

The Tenant testified that he is seeking \$2,960.00 in compensation due to the Landlord's failure to comply with section 51 (2) of the *Act*. The Tenant submits that the Landlord's family members did not meet the requirements of the legislation that the rental unit be used for the stated purpose of ending the tenancy. The Tenant submits that he has evidence that the Landlord's family returned to China after 2 months. The Tenant has provided documentary evidence of travel insurance confirmations that indicates the Landlord's family members had to return date to China by June 20, 2013.

The Tenant is also seeking \$3,500.00 for loss of property. The Tenant testified that the Landlord broke into the rental unit on January 7, 2014, and confiscated his property. The Tenant submits that the Landlord required a writ of possession from the Supreme Court to enter the rental unit. The Tenant testified that the Landlord took half a dozen sketches from a famous artist. The Tenant submits that he has assigned a value of \$600.00 per painting base on the art work he has sold on an online auction site and based on previous sales.

The Tenant did not provide any documentary evidence or photographic evidence of the sketches or paintings, or receipts of previous art work sold online.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Section 67 of the *Act* states that if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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

I do not accept the Tenant's testimony that he was surprised to find the rental unit furnished when he moved into the rental unit. I accept the tenancy agreement provided by the Landlord that indicates the tenancy agreement was signed on September 21, 2012, prior to the Tenant moving in to the rental unit. The tenancy agreement states the rental unit is furnished and the

Tenant signed an itemized furniture list. The furniture list is signed by the Tenant and dated September 22, 2013. The Tenant stated that he had to make arrangements to move his furniture into storage because of his surprise that the rental unit was furnished, but he has not provided any documentary evidence to support his testimony.

I do not accept the Tenant's testimony that the Landlord moved the furnishings out of the rental unit on March 8, 2013. The Landlord submits that she did not remove the furnishings on March 8, 2013, but she did return the security deposit to the Tenant on that date because the Tenant was having difficulty paying the rent. The Police report indicates the Landlord told the police officer that the last time she saw the furnishings was during an inspection in August 2013, which is after the date the Tenant alleges the Landlords removed the furniture. I also find it unusual that the Tenant would agree to continue to pay \$1,480.00 per month if the Landlord had removed the all of the furnishings that were included in the rent. I have also considered the Landlord's testimony that on January 7, 2014, some of the Landlord's furniture was found in the rental unit. This is contrary to the Tenants testimony that the Landlord removed all of her furniture. I have also considered the testimony of the Landlord that the door of the rental unit was locked and the Tenant never returned the keys. The police report indicates the Tenant had the only key to the rental unit. This is supported by the testimony that the Landlord had to break the lock on the door to get in. I find that the Tenant was responsible for the rental unit, and the contents of the rental unit, until the end of the tenancy.

Based on my findings above, I do not accept the testimony of the Tenant that he moved his own furniture into the truck and mobile storage unit when he moved out.

I find that the Tenant took the Landlord's furniture and is responsible to compensate the Landlord for the replacement value of the items. I accept the Landlord's evidence with respect to the cost of the items. I find that the Landlord took immediate steps to try and recover the stolen items by attempting to call the Tenant and by calling the police.

The Residential Tenancy Policy guideline # 40 Useful Life of Building Elements is a guide for determining the useful life of building elements when considering applications for damage or loss. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. The guideline indicates that if a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. With respect to furnishings the guideline provides the useful life in years for the following furnishings:

Item	Useful life in years
Microwave	10 years
Furniture	10 years

With respect to the Landlords claim for compensation, I have considered the replacement value of the items that were taken. Residential Tenancy Policy Guideline # 40 speaks to the value of furnishings. I determined the replacement value of the items claimed by the Landlord by dividing the cost of the item by its useful life, and subtracting the age of the item. The age of items were rounded up or down to the closest year.

Items	Cost	Useful life	Age of item	Valuation of Item
Dining room table and 6 chairs	\$783.99	10 years	2 years	\$627.92
Television West LD 32651	\$249.99	10 years	2 years	\$199.99
Television Samsung 42"	\$497.99	10 years	2 years	\$398.39
Television Sony 32"	\$379.99	10 years	2 years	\$303.99
Shaw Cable Box x2 (rented)	\$221.76	N/A	N/A	\$221.76
Ikea Sofa Bed	\$279.00	10 years	10 years	\$10.00 nominal
Lamps x 2 Home Depot	\$39.96	10 years	9 years	\$3.99
Queen size bed frame	\$299.00	10 years	1 year	\$269.10
Duvets x 3	\$149.97	10 years	1 year	\$134.97
Pillows x4	\$15.78	10 years	3 years	\$11.04
Mattresses x 2	\$2,077.80	10 years	3 years	\$1,454.46
Bedding	\$170.70	10 years	3 years	\$119.49
Night Table	\$139.98	10 years	2 years	\$111.98
Night Table	\$99.99	10 years	unknown	\$10.00 nominal
Desk x 2	\$299.98	10 years	2 years	\$239.98
Chairs x 3	\$89.97	10 years	2 years	\$71.97
Sofa	\$2,999.99	10 years	10 years	\$20.00 nominal
Bed frame	\$249.00	10 years	2 years	\$199.20
Coffee table	\$199.00	10 years	10 years	\$10.00 nominal
Clock Radio	\$22.53	10 years	2 years	\$18.02
Microwave Toshiba	\$100.00	10 years	6 years	\$40.00
DVD Player	\$80.00	10 years	9 years	\$8.00
			Total	\$4,484.25

I assigned all electronic items on the list a useful life of 10 years, similar to the guideline for a microwave. Bedding was also assigned a useful life of 10 years, similar to the useful life of furniture like a bed or a sofa.

I assigned a nominal valuation on a few items that had reached their useful life expectancy. While the items may not have a replacement value, the Landlord has lost the use of the items and I find it appropriate to award the Landlord a nominal amount for the loss of the items.

I grant the Landlord a monetary order in the amount of \$4,484.25 for the loss of the items listed above.

With respect to the Landlord's claim in the amount of \$334.18 for unpaid rent, I find that the decision from an Arbitrator in a previous hearing ordered the Tenant to pay the Landlord the amount of \$334.18. The Arbitrator did not issue a monetary order in the amount of \$334.18, so I award the Landlord the amount of \$334.18 for unpaid rent.

I dismiss the Landlord's claim for of \$4,500.00 for the cleaning, painting and repair of the rental unit. There is no evidence to establish the condition of the rental unit at the start of the tenancy and there is no evidence that shows damage to the rental unit at the end of the tenancy. While I acknowledge the Landlords photographs showing the rental unit had lots of garbage in it, the Landlord did not identify the cost for cleaning up the garbage. The Landlord has not provided sufficient evidence to prove her claim.

The Tenant previously agreed to settle the matter regarding the 2 Month Notice To End Tenancy for Landlord Use of Property. The Tenant benefitted from the agreement by receiving one month of free rent, and the tenancy continued until January 7, 2014. As part of the settlement, the 2 Month Notice to end tenancy was cancelled. Therefore the tenancy did not end because of the 2 Month Notice. The end of the tenancy was determined by mutual agreement. The Tenant cannot claim for compensation under section 51(2) of the Act, because the tenancy did not end due to a 2 Month Notice. The 2 Month Notice was cancelled. Therefore I find that the Tenant is not entitled to compensation due to the Landlords family failing to reside in the rental unit for 6 months.

I dismiss the Tenant's claim for \$3,500.00 for loss of property as there is insufficient evidence to support this claim. The Tenant did not provide any documentary evidence or photographic evidence to prove the existence of the art work to support his testimony that the art work was taken nor did the Tenant establish the value of the art that he alleges was taken.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim against the Tenant in the amount of \$4,918.43 comprised of \$4,484.25 for furniture, \$334.18 for unpaid rent and \$100.00 for the cost of the filing fee. I grant the Landlord a monetary order pursuant to section 67 of the Act, that the Tenant pay the Landlord the sum of \$4,918.43. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant is responsible for the loss of the Landlord's furnishings. The Tenant has also failed to pay rent as agreed in a previous dispute resolution hearing.

I grant the Landlord a monetary order against the Tenant in the amount of **\$4,918.43**. The order must be served on the Tenant and may be enforced in the Provincial Court.

The Tenant's claim is dismissed without leave to reapply as there was insufficient evidence to support his claims.

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: August 5, 2016

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Residential Tenancy Branch

