



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACONA INVESTMENTS  
PROTECTION PROPERTY MANAGEMENT REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNDC MNR MNSD FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for; a monetary order 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; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67, particularly the return of his security deposit and compensation for personal belongings.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Preliminary Issue – Scope of Application

The landlord's original application sought a monetary order of \$4150.00. In the details of the application, the landlord wrote, "Landlord hired bailiff to remove tenant, they want to recover that cost and all costs associated to the repairs and loss of rent and the filing fee." There is no detailed calculation of how the landlord arrived at his figures within his application. A monetary worksheet submitted by the landlord 8 days prior to the hearing indicated that he sought to amend his monetary application from \$4150.00 to \$9489.51. The worksheet itself refers to the \$177.31 cost of bailiff services as well as repair and clean-up of the rental unit in an amount totaling \$7312.20.

The landlord submitted invoices that clearly document the amount paid by the landlord

for bailiff services: \$2177.31. However the landlord provided insufficient evidence, in testimony or other documents, to explain the breakdown of the repair and clean-up costs incurred.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself. In the case of a monetary claim, a detailed accounting of the nature of the claim is crucial to the respondent's understanding of the claim.

I find that the landlord did not sufficiently set out the details of his monetary claim for cleaning and repairs in such a way that the tenant would have known what the landlord was seeking in the claim and how to respond to that part of the claim. At the hearing, I informed the landlord of his obligation to particularize his claim. The landlord responded that that he would rely on the Residential Tenancy Branch to determine the appropriate amount of his award with respect to the damage to the rental unit. Given the lack of breakdown of the landlord's monetary claim for cleaning and repairs and the landlord's failure to meet his obligation to include full details and evidence to support his application, I will not consider a claim by the landlord for cleaning or repairs at this time. This decision to narrow the scope of the proceedings does not preclude the landlord from reapplying for cleaning or repairs in a subsequent application.

I dismiss the landlord's portion of his application to recover the cost of cleaning and repairs to the rental unit with leave to reapply.

#### Issue(s) to be Decided

- Is the tenant entitled to a monetary order for compensation for lost property?
- Is the landlord entitled to a monetary order for compensation for bailiff services?
- Is the landlord entitled to retain all or a portion of the tenant's security deposit?
- Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

This tenancy began approximately thirteen years ago with a monthly rental amount of \$640.00 due on the first of each month. On November 19, 2015, an arbitrator of the Residential Tenancy Branch issued an Order of Possession to the landlord. The tenancy ended on December 14, 2015 when the tenant was removed from the rental

unit. The landlord continues to hold the tenant's \$250.00 security deposit paid at the outset of the tenancy.

The landlord testified that he incurred the cost of bailiff services to enforce the Order of Possession granted at a previous dispute resolution hearing packing the tenant's property. He sought to recover the costs for the bailiff services and to retain the tenant's security deposit towards that amount. The tenant sought the return of her security deposit and monetary compensation for items she was unable to take with her from the rental property.

The tenant testified that she was already moving out of the residence when the bailiffs arrived on December 14, 2015. She testified that she was told she would be charged with trespassing if she returned to the property. She testified that she was not allowed to continue to pack her own belongings and she was told they would be stored for her. She had packed several boxes before the bailiffs arrived. She testified that those boxes were placed outside the residence. The tenant testified that another person (a friend) in the building returned some of her personal belongings to her, particularly sentimental items. She testified that she had many expensive items that were left in the rental unit including; a couch, a bed, a chair, a toolbox, an antique sewing machine, important family photographs, a painting, other nick knacks as well as a collectable set of items from a movie.

The landlord submitted a letter prepared by the bailiffs on December 21, 2016 that indicated,

- The tenant disputed the Writ of Possession held by the bailiffs when they attended to the rental unit;
- The tenant stated she would attend to the courthouse to dispute the writ of possession;
- The tenant returned the same day with a moving truck, took her boxes and packed some of her remaining belongings at the edge of the property;
- The bailiffs gave the tenant a trespass warning to not enter the rental unit without permission.

An email from the bailiffs in contemplation of this hearing and dated September 13, 2016 indicated that,

- the only thing left in the residence was garbage;
- the tenant had an opportunity to re-enter property when the bailiffs and movers/packers' job was complete;

- the items listed on tenant's correspondence and application was not in the suite when the bailiffs signed off on the job.

The landlord submitted a monetary worksheet with no amounts. On the worksheet was written only, "letter from bailiff and costs". An invoice from the bailiffs detailing their work with respect to this tenancy indicated a total amount paid by the landlord of \$2177.31.

### Analysis

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.

With respect to the landlord's claim for recovery of the cost of bailiff services, the landlord has provided documentary evidence to verify the costs incurred by the landlord for bailiff services. The monetary amount is \$2177.31. The landlord has shown that the cost that he incurred was as a result of a violation of the *Act* by the tenant. The landlord was awarded with an Order of Possession and that Order of Possession was served to the tenant in accordance with the *Act*. The tenant failed to vacate the rental unit in accordance with the previous Residential Tenancy Branch decision and Order of Possession issued. As a result, the landlord took the reasonable step of hiring bailiffs to assist him in removing the tenant from the premises. That cost would not have been incurred by the landlord but for the actions or inaction of the tenant. Therefore, I find that the landlord is entitled to recover \$2177.31 in bailiff service costs from the tenant.

In accordance with section 72 of the *Act*, I find that the landlord is entitled to retain the tenant's security deposit towards the monetary amount they are entitled to recover.

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

With respect to the tenant's application and compensation claim for items that she was unable to retrieve from the rental property, I find that the tenant has supplied insufficient evidence to support her claim. The tenant provided hand written notes and submissions. However, the tenant did not submit photographs, receipts or other documentary

evidence to support her claim that the items she has listed on her application were in the rental unit prior to the end of tenancy; that they remained in the rental unit after she was asked to leave; or sufficient evidence to verify the cost of these items to replace.

I dismiss the tenant's application to recover the cost of;

- a deep freezer;
- 2 computers;
- Dvd player and movies;
- Antique chair;
- Area rug;
- Boxes of clothes;
- Television;
- Antique sewing machine;
- Doll collection; and
- Tool box.

I find that the tenant has provided insufficient evidence to support her claim for monetary compensation. I find that the tenant is not entitled to the return of her security deposit as the landlord is entitled to retain that deposit towards his monetary award.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I dismiss the landlord's application for cleaning and repair costs with leave to reapply.

I grant the landlord a monetary order as follows,

<b>Item</b>	<b>Amount</b>
Bailiff Services Costs	\$2177.31
Less Security Deposit	-250.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2027.31</b>

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

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 12, 2016

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Residential Tenancy Branch