



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, MNDC, OLC, PSF, RPP

### Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order requiring the landlord to return the tenants' personal property pursuant to section 65.

Tenant CS (the "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenants' application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application. The landlord acknowledged she did not provide any documentary evidence to the tenants or Residential Tenancy Branch for this hearing.

### Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant requested an adjournment. The tenant testified that she was scheduled for traffic court at 9:30 a.m. When asked when she was notified of this court date the tenant replied Friday September 30, 2016. The landlord did not consent to the adjournment. I find it probable that the tenant was notified earlier than Friday September 30, 2016 of a court proceeding requiring her attendance on Tuesday October 4, 2016. Based on this, I advised the parties the adjournment was not granted

and provided the tenant with an opportunity to contact an agent to act on her behalf. The tenant declined to contact an agent and presented her claim.

### Preliminary Issue – End of Tenancy

At the outset of the hearing, the parties agreed that a previous Decision was rendered on September 2, 2016 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. In the September 2, 2016 Decision, the parties mutually agreed that the tenants would vacate the rental unit no later than November 1, 2016 at 1:00 p.m. The landlord was issued an order of possession reflecting this agreement.

I cannot change or vary a matter already heard and decided upon as I am bound by the earlier decision/settlement.

Therefore the portion of the tenants' application related to the 10 Day Notice dated August 2, 2016 is dismissed without leave to reapply. The order of possession already granted by the previous Arbitrator effective November 1, 2016 at 1:00 p.m. still stands.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order for the landlord to provide services or facilities required by tenancy agreement or law?

Are the tenants entitled to an order requiring the landlord to return the tenant's personal property?

### Background and Evidence

The parties provided conflicting testimony on the tenancy start date. The landlord estimates that the tenancy started September 2015 whereas the tenant estimates the tenancy started in October or November 2015. Both parties agreed it is a month-to-month tenancy and rent in the amount of \$800.00 is payable on the first of each month. The tenants did not remit a security deposit at the start of the tenancy.

On August 6, 2016 the landlord removed some of the tenants' possessions from the rental unit and placed them outside. The landlord boarded up the rental unit this same date. The tenants gained access and continue to reside in the rental unit.

The landlord restricted access to laundry facilities for the last two months due to the nonpayment of utilities.

*Tenant*

The tenant seeks damages in the amount of \$3,560.00. The tenant claims her engagement ring valued at \$3,100.00 and tools valued at \$460.00 were not found inside the rental unit or amongst her possessions outside the rental unit. The tenant seeks to regain access to laundry services and regain possession of her lost belongings.

*Landlord Reply*

The landlord denies seeing an engagement ring or tools and disputes taking these items.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Although the landlord acknowledged some items of the tenants were removed from the rental unit, she disputes an engagement ring and tools were amongst these items. The tenant bears the onus to prove these specific items were removed by the landlord. I find the tenant has failed to satisfy the burden as she has provided insufficient evidence to establish the landlord removed these specific items and displaced them. For these reasons I dismiss the tenants' application for monetary compensation and the return of personal property.

Based on the landlord's testimony that laundry services were once provided and have recently been restricted, I find the landlord has failed to provide services as required by the verbal tenancy agreement. Pursuant to section 62 of the *Act*, I order the landlord to provide access to laundry services effective immediately.

Conclusion

The tenants' application to cancel the 10 Day Notice dated August 2, 2016 is dismissed without leave to reapply. The order of possession already granted by the previous Arbitrator effective November 1, 2016 at 1:00 p.m. still stands.

The tenants' application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and for the return of personal property is dismissed without leave to reapply.

The landlord is ordered to provide access to laundry services to the tenants effective immediately.

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 04, 2016

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Residential Tenancy Branch