



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, MNDC

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested return of her property pursuant to section 65(1) of the *Residential Tenancy Act* as well as monetary compensation from the Landlord for the value of the items not returned.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to return of her personal property?
2. Should the Tenant recover the value of her property from the Landlord?

### Background and Evidence

The Tenant testified that she moved into the rental unit on January 1, 2016. She stated that within the first month she started having problems with the Landlord whom she described as "very difficult" and "very loud".

By Decision dated July 5, 2016 the Landlord was granted an Order of Possession as well as authority to retain the Tenant's \$300.00 security deposit and a Monetary Order in the amount of \$1,600.00 (a copy of the Monetary Order was provided in evidence).

The Tenant testified that she vacated the rental unit on July 13, 2016. She stated that although she moved out of the rental unit on that date she was not in financial position to pay for assistance to remove her items. She stated that she put her items in a secure covered area as instructed by the Landlord. The Tenant stated that the Landlord gave her 30 days to retrieve her items.

The Tenant testified that on July 27, 2016 she returned to the rental unit to retrieve her items. She further testified that she was able to retrieve all her items save and except for her antique sewing machine and her single mattress and box spring. In the within action she sought recovery of those items or monetary compensation for their value. She confirmed that she would prefer to have them returned, but confirmed that she has asked for monetary compensation as the Landlord informed her she was going to sell them.

In support of her \$2,014.03 monetary claim the Tenant provided print outs from a popular furniture store confirming the value of the twin box spring as \$110.00 and the mattress at \$879.99. The Tenant also stated that the antique sewing machine had been in her family for close to 100 years. She provided in evidence a copy of an ad from a popular internet buy and sell site which showed the estimated value of the sewing machine as \$800.00.

The Landlord testified as follows. She confirmed that she still has possession of the Tenant's twin mattress and box spring as well as the antique sewing machine. She stated that she retained the Tenant's belongings as the Tenant didn't pay rent for three months and owes the Tenant \$1,600.00 pursuant to the Monetary Order she received. She further stated that the Residential Tenancy Branch told her that she could retain the Tenant's belongings for 60 days.

The Landlord confirmed she could make these items available for retrieval on Friday October 14, 2016 from 12:00 noon to 2:00 p.m.

### Analysis

The Landlord suggested that the Tenant's belongings could be characterized as "abandoned". Section 24 of the *Residential Tenancy Regulation* deals with abandoned property and provides as follows:

**Abandonment of personal property**

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

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(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

(b) 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.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

I accept the Tenant's evidence that she and the Landlord had an agreement that she would return on July 27, 2016 to retrieve her property. Accordingly, I find that an agreement existed as contemplated in section 24(4) as reproduced above.

Further, I find that the circumstances surrounding the Tenant giving up the rental unit were not such that the Landlord could conclude that the Tenant would not return to the residential property. The Tenant's property was therefore not abandoned as contemplated by section 24.

The Landlord had no legal authority to retain the Tenant's single bed mattress and box spring as well as her antique sewing machine. I therefore Order, pursuant to section 65(1)(e) as follows:

1. The Landlord shall ensure that the Tenant's twin mattress and box spring, as well as her antique sewing machine, are available for the Tenant to pick up from the rental property between 12:00 noon and 2:00 p.m. on October 14, 2016.
2. Should the Tenant not attend the rental property and retrieve these items as provided for above, the Landlord must deal with the Tenant's property pursuant to Part 5 of the *Residential Tenancy Regulation*.
3. Should the Tenant attend the rental property and be denied the opportunity to retrieve her items, she shall be at liberty to apply for a Monetary Order in the amount of \$2,014.03, which I find to be the replacement value of those items, in addition to any costs associated with amount charged for moving those items.

### Conclusion

The Tenant's request for return of her property pursuant to section 65(1) of the *Act* is granted. She shall be permitted to retrieve those items as set out in this my Decision. Her request for monetary compensation is dismissed with leave to reapply; should the Landlord deny the Tenant the opportunity to retrieve her items as set out in this my Decision, the Tenant is at liberty to apply for monetary compensation. For the purposes of such an application I find the value of the Tenant's single bed mattress and box spring and antique sewing machine to be \$2,014.03.

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 13, 2016

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Residential Tenancy Branch