



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation under the Act.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Procedural matter

Although the tenant was claiming the total amount of \$6,158.15, in their application, I find the tenant has calculated their claim wrong. The amount claimed is noted below in detail.

### Issue to be Decided

Is the tenant entitled to monetary order for money owed or compensation?

### Background and Evidence

The tenancy began in October 2013. Rent in the amount of \$450.00 was payable on the first of each month. A security deposit of \$225.00 was paid by the tenant. The tenancy ended on March 3, 2014.

The tenant claims as follows:

a.	Hotel, shelter and food	\$ 782.73
b.	U-Haul	\$ 576.91
c.	Parking ticket	\$ 100.00
d.	Storage and moving costs	\$ 409.01
e.	Gas & transportation	\$ 544.72
f.	Damaged futon and computer	\$ 1,119.76
g.	Compensation	\$ 2,225.00
h.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$ 5,858.13</b>

The tenant testified that the landlord breached the Act on March 3, 2014, by removing their belongings from the rental unit and changing the locks. The tenant testified that they were at a hearing on March 5, 2014, and they were granted an immediate order of possession of the rental unit. The tenant stated that when they received the order they attended the rental premises and the landlord would not give them access to the rental unit. Filed in evidence is USB audio recording of the event.

#### Hotel, shelter and food

The tenant testified that as a result they were left homeless for 15 days. The tenant stated that they slept in a hotel for four nights, ten nights in their vehicle and one night in the U-Haul. The tenant stated that on three of the nights that they slept in their car they went to the movie theater to watch a movie and get out of the cold. The tenant seeks to recover hotel costs in the amount of \$409.40 and theater tickets in the amount of \$48.81. Filed in evidence are hotel receipts. Filed in evidence are movie ticket receipts.

The tenant testified that since they were homeless they had nowhere to store food or prepare their meals. The tenant seeks to recover cost of meals that they had to purchase during this time frame in the amount of \$324.52. Filed in evidence are receipts.

#### U-Haul

The tenant testified that because their belongings were left outside they had to rent a U-Haul to store their belongings. The tenant stated that they were hopeful to either move back into the rental unit or find new living accommodations. The tenant seeks to recover U-Haul costs of \$576.91. Filed in evidence is a copy of the U-Haul receipts.

#### Parking ticket

The tenant testified that they left the U-Haul parked in the street, which is in a residential area. The tenant stated they received a parking ticket that they would not have received had the landlord not locked them out of the rental unit. The tenant seeks to

recover the cost of the parking ticket in the amount of \$100.00. Filed in evidence is a copy of the parking ticket.

#### Storage and moving costs

The tenant testified that they had to obtain a storage locker to store their belongings as a result of not having living accommodations. The tenant seeks to recover storage costs and moving costs in the amount of \$409.01.

#### Gas & transportation

The tenant testified that they seek compensation for the cost of gas in the amount of \$383.00. The tenant stated that they also had to make repairs to their vehicle during this time and seek to recover the amount of the repair in the amount of \$161.72.

#### Damaged futon and computer

The tenant testified that when the landlord removed their belonging and placed them underneath the deck that their futon bed and computer were not protected and got rained on. The tenant stated they were able to purchase a used futon from a popular website for \$250.00. The tenant stated the balance claimed is the loss of their computer. The tenant seeks compensation in the total amount of \$1,119.76. Filed in evidence is a receipt to replace the futon.

#### Compensation

The tenant testified that in addition to the above amounts claimed that they seek compensation for the illegal eviction. The tenant stated being homeless and having to sleep outside was extremely stress full. The tenant seeks compensation in the amount of \$2,225.00.

#### *Landlord's response*

The landlord testified that they did not remove the tenant's belonging from the rental unit, that the tenant removed them. The landlord stated that the incident happened two years ago and has difficulties remember the events.

The landlord testified that they are unable to tell if the person on the USB is that of their voice. The landlord testified that after the March 5, 2014, hearing. They filed an application for review consideration and were waiting for the outcome of the decision which was issued on March 18, 2016.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I am satisfied that the landlord breached the Act, when they locked the tenant out of the rental unit. The landlord had no authority under the Act to do so.

I am further satisfied that the landlord failed to comply with the order of possession issued on March 5, 2014. The order granted the tenant an immediate order of possession of rental unit. The audio recording supports the tenant's version that the landlord refused access. I am satisfied that the person on the recording is the landlord as the person informs the tenant that they are denying access as they have filed for a review consideration.

I accept the landlord had the right to file for a review consideration of that decision and order; however, the original decision and order was not suspended. The landlord's application for review consideration was dismissed on March 18, 2014.

During this time the tenant was unable to enforce the order of possession until the landlord's application for review consideration was heard. This left the tenant homeless. I am satisfied that because of the landlord's failure to comply with the Act and the order of possession that the tenant suffered a loss.

#### Hotel, shelter and food

I have considered the tenant's claim and I find the cost for the renting a hotel room for four days, movie tickets for entertainment and shelter, and the cost of food reasonable and is supported by receipts. Therefore, I grant the tenant the following costs: four nights' hotel costs in the amount of **\$409.40**; movie tickets (shelter) in the amount of **\$48.81**; and cost of food in the amount of **\$324.52**.

#### U-Haul

I am satisfied that the tenant is also entitled to cost of the U-Haul as it was necessary to protect and remove their belonging which were left outside. I have considered the receipts filed as evidence and can verify the amount of \$505.65. I am unable to

determine what the difference in the claimed was for. Therefore, I find the tenant is entitled to recover the amount of **\$505.65**.

#### Parking ticket

I am not satisfied that the landlord is responsible for the full amount claimed for the parking ticket for the U-Haul that was parked on the roadway. The ticket filed in evidence shows if the ticket was paid within 7 calendars the fine amount would be reduced to \$60.00. The tenant did not provide proof of payment. Therefore, I find it reasonable to grant the tenant the lower amount of the fine in the amount of **\$60.00**.

#### Storage and moving costs

I am not satisfied that the landlord is responsible for the full amount claimed for storage costs. Since the evidence supports the tenant had new living accommodations commencing March 20, 2014, and the invoice submitted as evidence included storage cost for April and May 2014. Therefore, I find the tenant is entitled to storage costs that were incurred for the month of March 2014, in the amount of **\$119.01**.

#### Gas & transportation

I am not satisfied that the landlord is responsible to pay the fuel cost or maintenance cost for the tenant's vehicle, while I accept the tenant may have used more fuel than normal, there is no way for me to determine the amount. The tenant did not provide sufficient details. Therefore, I dismiss this portion of the tenant's claim.

#### Damaged futon and computer

I am satisfied that the landlord is responsible for the full amount claimed by the tenant for futon that was damaged due to the rain because the tenant was locked out of the rental unit. I accept the tenant paid to replace the futon with a second futon of similar age. Therefore, I find the tenant is entitled to recover the amount of **\$250.00**.

However, I am not satisfied the market value of the computer was worth \$869.76. The market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any obligation to buy or to sell and both having reasonable knowledge of relevant facts, such as age and condition.

While I accept the tenant purchased a new laptop the amount claimed is not consistent with their claim. The landlord is only responsible for the market value of the damage item at the time of its loss, not the retail price. I cannot determine the market value of the computer. Therefore, I grant the tenant a nominal amount to recognize the breach in the amount of **\$10.00**.

### Compensation

The tenant is claiming the amount of \$2,225.00 for compensation for being homeless. However, the tenant was unable to justify how they arrived at that amount. I find the amount claimed is high as it exceeds the cost of their monthly rent of \$450.00 or the cost for a hotel for the 15 days which would have been \$1,535.25. Therefore, I find it reasonable to compensation the tenant the equivalent of their daily rent of \$14.51 for the 15 days in the total amount of **\$217.65**.

Base on the above, I find the tenant is entitled to a monetary order in the amount of **\$2,045.04**, comprised of the above amounts and \$100.00 to recover the filing fee from the landlord.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenant is granted a monetary order in the above-described amount.

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: November 9, 2016

---

Residential Tenancy Branch