



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has requested compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

The landlord confirmed receipt of the hearing documents, evidence, including photographs submitted by the tenants within the required time limit.

At the start of the hearing the landlords' witness was excused. The witness was later called in to testify.

One of the two tenants is named on the application for dispute resolution; T.C. Both tenants attended the hearing.

### Issue(s) to be Decided

Are the tenants entitled to return of the security deposit?

Are the tenants entitled to compensation for damage to personal property?

### Background and Evidence

The tenancy commenced in March 2015. Rent was \$850.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$412.00.

The landlord said that the tenants did not pay the rent or deposit; it is paid by a government ministry.

There was no dispute that on May 25, 2016 the landlord had their witness, L.G., remove the tenants' property from the home. L.G. testified that he was given access to the rental unit by the landlord and hired to remove the tenants' personal property. The landlord confirmed that this

occurred in the absence of legal authority to do so. The landlord said they had applied requesting an order of possession but had yet to obtain any orders. The landlord stated the tenants had not paid rent for two months. The landlord stated that an order of possession is useless and not enforceable.

The landlord testified that there was a court order requiring the male tenant to stay away from the property and that he felt the tenant should move, for her own safety. It was explained that a court order of that nature was not relevant to the tenancy, but a matter for the court that issued the order.

The process of enforcing an order of possession was explained to the landlord. The landlord was told that a landlord does not have the legal authority to remove a tenant from a rental property without obtaining a Writ of possession and hiring an authorized court bailiff. The landlord repeatedly said that the orders are of no use, stating "what is the point of an order of possession," and that it would cost him \$6,000.00 to have tenants removed.

The tenants said they had suffered abuse by the landlord. The tenants supplied copies of two text messages sent by the landlord. The landlord used language that any reasonable person would term as extremely derogatory.

The tenants said that on May 26, 2016 all of their personal property had been removed and taken to the female tenants' fathers' home and left on the lawn. The tenants supplied 23 photographs showing the mover taking items from a van and items piled on the lawn. Photos showed items that were damaged, torn and broken. Other photos show the movers van backed up to items piled on the lawn against some bushes. The van has the movers' first name written on the side window.

The tenants supplied a list, setting out their claim:

Hide a bed couch	\$60.00
Sectional couch	50.00
Kitchen table	40.00
Chair	20.00
Shelf	20.00
Playpen	40.00

Crib	150.00
Brown picture frame	20.00
Black picture frame	20.00
Exersaucer	20.00
Playstation 3	120.00
<b>TOTAL</b>	<b>\$560.00</b>

Photographs show damage to a shelving unit, playpen, wooden crib, two picture frames, child play saucers, a torn arm of a couch. The belongings can be seen piled on top of each other. Three couches are placed one on top of the other. A kitchen table was damaged so that it no longer sits level. The metal hinges on the wood crib are bent. The tenant said a computer game

was damaged and no longer works. The tenants said that the landlord failed to take any care of their belongings.

The witness provided affirmed testimony that none of the items were damaged in the move. The witness went to the home the day before removing the items, to pack. He was confronted by some "native people." The witness said he was careful with the belongings. The witness said the items were damaged before they were moved. After leaving the property on the lawn the witness returned to place a tarp over the belongings and found the items had been piled up and damaged.

The landlord said that he has used the same mover on at least 10 occasions and that no one else has complained of damage. If the tenants were concerned they should have been at the rental unit; the move was provided at no cost to the tenants. The landlord said that it is outrageous that the tenants have claimed the cost of damage as, all together, the personal property was not worth what they have claimed.

At times during the hearing the landlord challenged my determinations made in relation to submissions that were or were not relevant to the claim. An arbitrator has the authority to make those determinations.

As the hearing was concluding and my final remarks were being made the landlord hung up and exited the conference call hearing.

### Analysis

Section 45 of the Act sets out how a tenancy may end.

**44** (1) *A tenancy ends only if one or more of the following applies:*

*(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*

- (i) section 45 [tenant's notice];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
- (vii) section 50 [tenant may end tenancy early];*

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

*(c) the landlord and tenant agree in writing to end the tenancy;*

*(d) the tenant vacates or abandons the rental unit;*

*(e) the tenancy agreement is frustrated;*

*(f) the director orders that the tenancy is ended.*

*(2) [Repealed 2003-81-37.]*

*(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and*

*tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.*

The landlord had applied requesting an order of possession, but at the time the landlord had the tenants' personal property removed from the property the landlord had no legal authority to do so. The landlord had not been issued an order of possession. Therefore, I find that when the landlord removed the tenants' personal property the landlord committed an egregious breach of the Act.

There is no dispute that the landlords' witness took the tenants' personal property and left it on the lawn of a family member. To suggest the tenants were provided with a free move, rather than viewing this move as a breach of the Act, no matter what rent might be due, indicates a failure on the part of the landlord to understand or acknowledge the rights and obligations set out in the legislation.

Based on the photographic evidence supplied by the tenants I find that the property was left in a pile on the lawn. A person can be seen removing items from the van that shows the first name of the witness on the window, with items piled near the van. I preferred this photographic evidence as a more reliable record of the state of the personal property, over the testimony of the landlord and his witness. The damages can be seen on items which were left on the lawn.

Any reasonable person would expect that when property is left on the side of a road, in a pile, unattended, that it would be vulnerable to damage. If the property was not damaged during the move it could certainly be subject to damage by any person passing by.

I have rejected the landlords' submission that the personal property had little value. I find that the property had value to the tenants' and that the claim for damage is reasonable. I have based this finding on the testimony and the photographs that show damage. Further, the property was moved without the permission of the tenants, who were not given any control over how the property was handled. Therefore, I find on the balance of probabilities that the actions of the landlord directly resulted in damage to the personal property of the tenants' personal property.

As a result I find, pursuant to section 67 of the Act, the tenants are entitled to compensation as claimed; \$560.00.

In relation to the security deposit, the tenants have confirmed that they did not supply the landlord with a written forwarding address until the landlord was served with Notice of this hearing. Section 38 of the Act requires a landlord to submit a claim against the deposit or return the deposit within 15 days of receipt of the written forwarding address, or the end of tenancy, whichever date is later. When the tenants applied requesting return of the deposit before providing their written forwarding address to the landlord, I find that the application requesting return of the deposit was premature.

Therefore, I find that the tenants must serve the landlord with a written forwarding address. The tenants may use the same service address for the landlord that is indicated on the current application for dispute resolution. The tenants may serve the landlord by registered mail, which if not claimed, is deemed served on the fifth day after mailing. The landlord will then have 15 days after service to either return the deposit or submit a claim against the deposit.

Therefore, the tenants claim requesting return of the security deposit is dismissed with leave to reapply.

Based on these determinations, pursuant to section 67 of the Act, I grant the tenants a monetary order in the sum of for the balance of \$560.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

#### Conclusion

The tenants are entitled to compensation for damage to their personal property, as claimed.

The claim requesting return of the security deposit is dismissed with leave to reapply.

This decision is final and binding and 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: December 09, 2016

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Residential Tenancy Branch