



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP, FF

### Introduction

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

- 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 return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord along with the landlord's assistant 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 tenant's 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.

At the outset of the hearing, the tenant and landlord both confirmed they did not provide any documentary evidence to each other or the Residential Tenancy Branch.

### Issue(s) to be Decided

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

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

Is the tenant authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

Neither party provided a copy of a written tenancy agreement. The parties provided conflicting testimony on the tenancy start date. The landlord estimates that the tenancy started January 2015 whereas the tenant estimates the tenancy started in February 2015. Both parties agreed it was a month-to-month tenancy and rent in the amount of \$750.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$370.00 at the start of the tenancy.

### Tenant

It is the tenant's position that sometime in mid-October of 2016; the landlord changed the locks. The tenant estimates that a day or two later she attended the unit with police and discovered all her possessions were gone. The tenant provided the police file number. The tenant applied for a \$20,000.00 monetary order for her missing possessions. The tenant testified that she was seeking the following:

ITEM	VALUE
Xbox	\$562.16
Sectional couch	\$2,300.00
Computer laptop	\$1,400.00
Bracelet	\$2,500.00
Watch	\$500.00
Clothes	\$2,000.00
Television x 2	\$3,400.00
Cooking ware	\$400.00
Dresser	\$150.00
TOTAL	\$13,212.16

Although the tenant applied for a \$20,000.00 monetary order, I find, based on her testimony, she is seeking a monetary order in the corrected amount of \$13,212.16.

### Landlord

The landlord indicated that at the end of September the tenant paid her September rent, handed in the keys, removed her belongings and vacated the rental unit. The landlord denied changing the locks. The landlord recalls that a male that previously frequented the rental unit during the tenants occupancy, showed up with police sometime in October looking for "his stuff." The landlord allowed the police and male to search the

rental unit, the garage and basement. The landlord reiterated that the tenant took her belongings when she moved out of the rental unit in September.

### 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 this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

The tenant seeks a monetary order in the amount of \$13,212.16. The tenant contends that the landlord is in possession of her personal property whereas the landlord denies possession of the tenant's personal property.

The tenant has provided insufficient evidence to establish the landlord is in possession of her personal property, therefore an order for the return of the tenant's personal property cannot be made. The tenant has failed to provide sufficient evidence to support the amount being claimed.

I find the tenant has failed to meet the burden of proof to prove the landlord violated the *Act*, *Regulation* or tenancy agreement and have failed to prove the value of this claim. Therefore I dismiss the tenant's claim due to insufficient evidence, without leave to reapply.

As the tenant was not successful in this application I find she is not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: January 05, 2017

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Residential Tenancy Branch