



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RPP

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have his personal property returned.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord. During the hearing the landlord proposed that I could call a staff member as a witness. The tenant agreed with allowing the witness. I attempted to call the witness but he was unavailable.

While the tenant's original Application for Dispute Resolution was submitted on February 2, 2017 he submitted an Amendment to an Application for Dispute Resolution in which he indicated that his monetary claim had changed and provided a new value of \$558.67.

As the tenant failed to identify a monetary claim on his original Application and he provided no details of the change on his Amendment form, he clarified at the start of the hearing that he was seeking compensation for the replacement and use of a rental sewing machine that the landlord had removed and had not returned. The landlord understood the amendment and was prepared to respond to it; as such I allowed the amendment.

I also note the tenant submitted additional evidence to this file on February 28, 2017 or 3 days before this hearing. The tenant submitted that this was actually evidence for another matter. As a result and because it was submitted late I advised both parties that I would not be considering this specific evidence.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to return the tenant's sewing machine and; to a monetary order for compensation for the replacement of the sewing machine by rental and by purchase, pursuant to Sections 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began in August 2015 as a month to month tenancy for the monthly rent of \$375.00 due on the 1<sup>st</sup> of each month with a security deposit of \$187.50.

The tenant submitted a letter from a neighbour stating that on Friday, December 9, 2016 at approximately 4:00 a.m. a staff member named Mike took the tenant's sewing machine and a large folding table to the elevator and downstairs.

The tenant also submitted copies of letters he wrote to the landlord on January 17, 20, and 31, 2017. Each of the letters requests the return of his sewing machine. In one of the letters the tenant suggests if it is not returned he will file a police report.

The tenant testified that he never did file a report with police because they told him that they could not respond that day and that nothing was likely to happen with his allegations.

The tenant also testified that two staff members had told him that they had seen his sewing machine in the basement.

The landlord submitted that he had reviewed their security tape recordings and found no evidence that any staff member had removed the tenant's sewing machine. The landlord also submitted written statements from 8 staff members confirming that none of the employees had seen a sewing machine in the basement of the residential property.

The tenant questions the landlord's submission of a 9<sup>th</sup> letter from the landlord's agent relaying another staff members assertion that he had not seen the sewing machine in the basement because he says the staff member was available to provide a written statement despite the landlord's claim that he was not.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26(3) of the *Act* stipulates that a landlord cannot seize any personal property of the tenant.

When one party to a dispute provides testimony regarding circumstances related to a tenancy or event during the tenancy and the other party provides an equally plausible

account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me the landlord disputes the tenant's claim that any staff member has removed or seen the tenant's sewing machine. In support of his position the tenant has only submitted one written statement from a witness; the landlord has submitted 8 letters from staff contradicting the tenant's claim.

As the tenant has provided no other evidence or had his witness attend the hearing to provide a first-hand account of her assertions that she saw a staff member remove the tenant's sewing machine or provide the landlord with an opportunity to cross-examine her, I find the tenant has failed to establish that his sewing machine is missing, let alone that the landlord or any agent for the landlord has removed and/or stored the sewing machine.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: March 10, 2017

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Residential Tenancy Branch