



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP

### 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, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;

The tenant attended the hearing via conference call and provided affirmed testimony that the landlord was served with the notice of hearing package via Canada Post Registered Mail on March 10, 2016. The landlord did not attend or submit any documentary evidence. The tenant stated that she made an online search of the Canada Post website for online tracking and found that the landlord had signed in receipt of the package on March 13, 2017. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 10, 2016 and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset the tenant advised that the selected request for an order for the landlord to return the personal property was made in error and wishes to cancel this portion of the application. As such, no further action is required for this portion of the tenant's application.

### Issue(s) to be Decided

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

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 15, 2016 on a fixed term tenancy until February 28, 2017 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,050.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$525.00 was paid on November 7, 2016.

The tenant seeks a monetary claim for \$6,120.45 which consists of:

\$2,625.00	Aggravated Damages for illegal eviction
\$1,960.12	Estimated Loss of Work
\$278.90	3G Motorola Phone
\$291.00	Max Mara Blazer
\$364.00	Wool Cardigan
\$210.60	3 pairs of Denim pants
\$229.57	Sonic Tooth Brush
\$47.91	6 Towels
\$19.02	Hair Appliance
\$94.08	2 Duffle Bags

The tenant provided affirmed testimony that on November 19, 2016 the tenant was asked to leave the rental premises by the landlord and that the tenant complied. During the move-out the tenant stated that the landlord refused to allow the tenant access to retrieve the noted items below from the rental premises.

3G Motorola Phone  
Max Mara Blazer  
Wool Cardigan  
3 pairs of Denim pants  
Sonic Tooth Brush  
6 Towels  
Hair Appliance  
2 Duffle Bags

The tenant has provided undisputed affirmed evidence that the tenant has made multiple requests for the landlord to return the noted items. The tenant stated that she has attended with the police as well as a written request dated January 26, 2017 for the landlord to return the noted items. The tenant confirmed that as of the date of this hearing all forms of communication with the landlord have gone unanswered and none of the items requested have been returned.

The tenant stated that her claim for "Aggravated Damages" was based upon a calculation equal to 2 ½ months rent @ \$1,050.00 per month for the loss of her home and for the landlord's actions in illegally evicting her. The tenant stated that this calculation is based upon previous Residential Tenancy Branch Decisions. The tenant did not provide any basis of how these previous Decisions were related to this circumstance or how it equates to the claim for damages.

The tenant stated that she suffered a loss of work after being illegally evicted by the landlord. The tenant provided affirmed testimony that she suffered a loss of work between November 11, 2016 to December 18, 2016 (approximately 5 weeks). The tenant stated that she works based upon her availability posted to a web calendar and had failed to update her calendar to show her availability for work. The tenant stated that upon posting her availability the practice would be for the tenant to await a call-out for work when requested. The tenant relies upon her call-out to work from September 28, 2016 until November 8, 2016 when she worked on 10 occasions totalling \$1,960.12 of income to establish the actual amount of estimated work for the period November 11, 2016 to December 18, 2016.

On the remaining 8 items of claim for property that the landlord has failed to return following the end of tenancy, the tenant has provided copies of:

- Receipt for purchase of 3G Motorola Phone
- Copy of warranty paperwork for Sonic Tooth Brush
- A photograph of a sweater, receipt of purchase and business card from the business of purchase.
- A copy of a listed transaction of purchase for 2 dufflebags
- An online photograph of likeness for pants
- A copy of a printout of Customer Transaction to show the purchase of jacket

#### 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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord withheld the noted items and failed to return them to the tenant.

On the tenant's claim for "Aggravated Damages" of \$2,625.00, I find that the tenant has failed. Residential Tenancy Branch Policy Guideline #16, Compensation for Damage or loss states in part,

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the *Act*, regulation or tenancy agreement or (if applicable) the amount of money the *Act* says the non-compliant party has to pay. **The amount arrived at must be for compensation only, and must not include any punitive element.** A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

In this case, the tenant has failed to provide sufficient evidence that compensation for this amount as no actual losses were incurred for this portion of her claim. As such, this portion of the tenant's application for "Aggravated Damages" is dismissed.

On the tenant's request for \$1,960.12 for the estimated loss of work, I find that the tenant has failed. Although I accept that the tenant's evidence that a loss of work occurred, the tenant has failed to provide sufficient evidence that she suffered a loss of work for the period claimed. The tenant instead relies upon the pre-ceeding 5 week period in which she worked a total of 10 times over a 5 week period. I find that this is insufficient as the tenant has provided affirmed testimony that this was call-out and that work hours are not guaranteed. The tenant did not provide sufficient evidence that her employer would have called her for work and that this work would equal the amount claimed by the tenant. As such, this portion of the tenant's claim is dismissed.

I accept the undisputed affirmed evidence of the tenant and find that the landlord did withhold the noted items and failed to return them to the tenant even after requests were made by the tenant. The landlord has failed to return the noted items and the tenant's requests have gone unanswered. The tenant has provided a detailed list of the

unreturned items along with copies of receipts, a warranty card and a detailed description of the items sought that was made to the police. On this basis, I find that the tenant has provided sufficient evidence to establish a monetary claim for \$1,535.08 for the below noted items.

\$278.90	3G Motorola Phone
\$291.00	Max Mara Blazer
\$364.00	Wool Cardigan
\$210.60	3 pairs of Denim pants
\$229.57	Sonic Tooth Brush
\$47.91	6 Towels
\$19.02	Hair Appliance
\$94.08	2 Duffle Bags

### Conclusion

The tenant is granted a monetary order for \$1,535.08.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 11, 2017

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Residential Tenancy Branch