



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, O

### Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed service of hearing documents. The tenant testified that he served his hearing package and evidence to the landlord's office in person in October 2016. The landlord's agent at the hearing stated that he replaced the former manager in January 2017 and he was unaware of this proceeding until the tenant had mentioned it to him in a recent conversation. After the tenant mentioned the hearing to him orally, the landlord found many of the hearing documents and evidence in the office but did not find the cable/internet bills the tenant has referred to and stated that the landlord provides basic cable to the rental unit. The tenant was adamant that he served all of his evidence upon the landlord in October 2016. Since the former agent for the landlord was not at the hearing and the current agent started months after service occurred it was impossible for me to determine what had been received by the landlord in October 2016; however, I found it reasonably likely the tenant did serve his hearing documents and evidence upon the landlord in October 2016 as he stated. Therefore, I admitted all of the tenant's evidence and I was prepared to describe the cable/internet bills to the landlord as necessary.

I noted that the monetary calculation provided with the tenant's application was somewhat convoluted. I compared the calculation with the evidence and the tenant was able to explain the calculation sufficiently so that the claim could be understood. The tenant's monetary claim included a request to recover rent paid for the three months of July, August and September 2016. The tenant requested during the hearing that his monetary claim be increased to include recovery of rent for the months that have passed since he filed. The tenant stated that the circumstances have largely not

changed except for the time that has passed since he filed. I found the tenant's request for amendment based on the mere passage of time to be reasonably expected and I permitted the claim to be amended.

Both parties referred to a previous dispute resolution proceeding in September 2016 in their respective submissions to me. I have referred to the file number for that proceeding on the cover page of this decision.

### Issue(s) to be Decided

Has the tenant established an entitlement to recover the amounts claimed against the landlord, as amended, for damage or loss under the Act, regulations or tenancy agreement?

### Background and Evidence

The tenancy started in 2011 and rent is payable on the first day of every month. The tenancy remains in effect as of the date of this hearing.

The parties provided inconsistent testimony as to the amount of the monthly rent. The tenant stated that he was informed that rent had been \$425.00 including back rent of \$10.00 and then it was increased to \$445.00. The tenant pointed to the previous dispute resolution decision as evidence that rent was increased to \$445.00. The landlord's agent testified that he does not have a copy of the decision for the previous dispute resolution proceeding; however, he has reviewed the tenant's file and is able to see a tenancy agreement that states rent was set at \$400.00 and increased to \$415.00 in October 2012. I asked the tenant how much he has been paying every month and he was uncertain, explaining the Ministry sends rent to the landlord directly, but he was unclear as to how much the Ministry has sent, and he is required to pay the balance but that he has paid cash and has not been provided receipts. The landlord stated that the Ministry has been sending \$400.00 to the landlord on behalf of the tenant and that any change to the amount sent by the Ministry must be initiated by the tenant. Since the landlord received \$400.00 from the Ministry the landlord has been requesting the tenant pay the balance of \$15.00 and the landlord will issue a receipt for cash payments. The tenant then stated the Ministry is sending \$425.00 to the landlord.

In the details of dispute, the tenant refers to the previous dispute resolution proceeding in alleging that the landlord was ordered to return the tenant's possessions to him but the landlord failed to return everything. The tenant submitted in the details of dispute that the failure of the landlord to return all of his possessions to him has made the rental

unit “non-inhabitable” and the tenant is unable to use the cablevision and internet he pays for. Accordingly, the tenant seeks to recover the rent he has paid for every month starting in July 2016; plus cable/internet services he has paid for since July 2016; plus, the value of his missing possessions. The tenant listed the missing possession and associated value as follows:

Office chair	\$100.00
Heated boot batteries and charger	750.00
Broom, mop, cleaning materials	50.00
Water filter and extra filter	100.00
Cheque book and financials	76.00
Bedding (returned only 1 comforter)	100.00
Electrical heated jacket	750.00
Computer and computer equipment	<u>1,578.80</u>
Total value of possessions	\$3,504.80

The tenant confirmed that he has continued to live in the rental unit even though he claims it is non-inhabitable. The tenant claims that he sleeps in the bathtub and attributed the decision to sleep in the bathtub to bedbugs and cockroaches in the rental unit. I noted that the tenant’s details of dispute and evidence did not include any mention of bedbugs or cockroaches, to which the tenant replied that I would see that issue in the previous dispute resolution proceeding decision.

The tenant provided receipts showing a purchase of a computer or computer related paraphernalia in the months of May and June 2016. The tenant also provided the first page of his bills from a cable/internet provider for the months of July, August and September 2016. The first page only shows the summary of charges but does not indicate the services provided. The tenant did not provide receipts or other documentary evidence to support the value of the other items.

The landlord’s agent responded by stating that the tenant of the unit adjacent to the rental unit had complained of water leaking in July 2016. The landlord investigated the source of the water leak and entered the rental unit to discover an air conditioning unit was running continuously and the water that accumulates from the air conditioner was diverted to a bleach bottle that was overflowing. Some of the tenant’s possessions had been removed from the rental unit to accommodate the water leak clean-up since the tenant was not home and had not been seen. In the days following the previous hearing the tenant’s possessions that the landlord moved to a storage room were returned to the tenant’s unit. The landlord’s maintenance person was called to testify as he had entered the unit and the tenant’s possessions from the rental unit.

The maintenance person testified that he entered the unit to investigate the source of the water leak and found the flooring soaked with water from the air conditioner that was overflowing. The maintenance man was instructed by the landlord to get the water soaked area cleaned up. He proceeded to take pictures of the rental unit to show the condition in which he found the unit. The maintenance person man testified that there were papers on the floor that were soaked with water. The maintenance man threw out the soaked papers, including magazines. The maintenance man also packed up some of the tenant's possessions that were in the area of the water leak, primarily some papers and a box of various items and put them in the fourth floor storage room. The maintenance man testified that he did not see any computer or modem or television set, or the other items the tenant listed in his claim with the exception of a "disgusting" comforter. The maintenance man testified that after the last hearing it was he who returned the tenant's possessions by placing them inside the rental unit.

The landlord doubted that the tenant actually lives in the rental unit and the rental unit looks as though it is used as a storage facility since the fridge was unplugged; the bed was covered in possessions including boxes and papers and it did not appear as though it is used to sleep in; and the tenant has only been seen once in four years.

As for the photographs taken of the rental unit by the maintenance man, the landlord was under the impression I already had them as evidence under the previous proceeding. I explained that I did not and each file is independent of another. The landlord submitted that the photographs show most of the rental unit. The landlord explained that the rental unit is a bachelor unit approximately 350 square feet including a kitchen and bathroom and the unit is furnished with a bed, nightstand and dresser provided by the landlord. The landlord offered to submit the photographs of the rental unit as they show that there was not computer in the rental unit or most of the other items the tenant claims to have had in the rental unit. I indicated that I would consider adjourning the hearing and ordering the landlord to produce the photographs; however, upon speaking with the tenant the tenant was of the position the landlord should have produced this evidence prior to the hearing and that he did not want to delay the proceedings any longer. I informed the tenant that without the photographs I would make a decision based upon the evidence before me. The tenant appeared satisfied that I would make my decision based on the evidence before me. Accordingly, I did not order service of the photographs and I have made this decision based upon the evidence that is before me with this file.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the applicant, the tenant bears the burden of proof in this case. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

It is undisputed that the landlord was previously ordered to return the tenant's possessions to him during a previous proceeding and I heard consistent testimony that possession were returned; however, the parties were in dispute as to whether the landlord took other possessions that were returned to the tenant. Evidence in support of each party's respective position amounted to disputed verbal testimony and I find the disputed verbal testimony is insufficient proof in this case. Also of consideration is that the landlord offered to provide photographs taken of the rental unit, which could have supported the tenant's position that he had the items in the unit that he claims to have had, and the tenant did not want the photographs considered. Furthermore, the value of the many of the items alleged taken was not supported by other corroborating evidence. As such, I find the tenant failed to satisfy me that the landlord took possessions that were not returned to him or the value of the possessions that were allegedly taken. Therefore, I dismiss the tenant's request for compensation for possessions he claims were taken by the landlord.

As for recovery of rent for the months since July 2016 I find the tenant's submissions were inconsistent and unreliable. In his written submission, the tenant asserted that it is his missing possessions that have rendered the rental unit "non-inhabitable"; yet, during the hearing he pointed to bed bugs and cockroaches as the reason the rental unit is uninhabitable. Whichever reason, the tenant confirmed that he does in fact live in the rental unit which is inconsistent with his position that the unit is uninhabitable.

Therefore, I deny the tenant's request to recover all of the rent that has been paid for the unit since July 2016.

As for recovery of cable/internet costs for every month since July 2016 I find the tenant failed to establish an entitlement to this. As I found above, the tenant has not satisfied me that the landlord took a computer and modem from his unit.

In light of the above, I dismiss the tenant's claim entirely.

As for the amount of the monthly rent payable, it would appear that in the previous dispute resolution decision the monthly rent was recorded as being \$445.00 at the time of that hearing. As I suggested to the parties during the hearing, it may be helpful for the landlord to review the rent obligations with the tenant based on the tenancy agreement and Notice(s) of Rent Increase in the file so that both parties have a clear understanding as to the amount of the monthly rent the landlord requires. I also suggest that the amounts received from the Ministry on behalf of the tenant be determined, and reconcile any difference, preferably by mutual agreement.

### Conclusion

The tenant's monetary claim against the landlord is dismissed.

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 28, 2017

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Residential Tenancy Branch