



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, OPT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an Order of Possession of the rental unit, pursuant to section 54.

The landlord and his English language translator (collectively "landlord") and the tenant 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 that his translator had authority to assist him at this hearing. At the outset of the hearing, the tenant intended to call a witness to testify on her behalf but then chose not to call her at the end of the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that he served a copy of his written evidence package to the tenant on April 12, 2017, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with his written evidence package. Both parties confirmed the tenant's correct mailing address during the hearing. The tenant confirmed that the landlord used the correct address but she did not receive the written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on April 17, 2017, five days after its registered mailing. I notified both parties that I would consider the landlord's written evidence at the hearing and in my decision because it was properly served in accordance with section 88 of the *Act* to the correct address and it

was deemed received by the tenant more than 7 days prior to the hearing date, so it was on time, as per Rule 3.15 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*.

During the hearing, the tenant confirmed that she did not require an order of possession to the rental unit, as she only wanted to pursue her monetary claims. Accordingly, this portion of the tenant’s application is dismissed without leave to reapply.

During the hearing, both parties confirmed that the tenant previously lived at the rental unit, even though she did not sign a written tenancy agreement with the landlord. Therefore, I find that a verbal tenancy agreement existed between these parties with the landlord’s knowledge and I find that I have jurisdiction to hear this matter. A “previous decision” between these parties for this rental unit, was made by a different Arbitrator on December 20, 2016, with the same finding of a verbal tenancy agreement.

#### Issues to be Decided

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

Is the tenant entitled to obtain a return of her security deposit?

#### Background and Evidence

The landlord provided a copy of the written tenancy agreement for this rental unit. As per the agreement, this tenancy began on September 15, 2016. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 was due for this tenancy. The tenant claimed that she paid it to the landlord. A written tenancy agreement was signed with a “male tenant,” whom the tenant said lived at the rental unit for two months and then moved out while she remained in the unit. The landlord said that the male tenant lived there and the tenant moved in after.

The landlord confirmed that he previously filed a direct request application, after which an ex-parte hearing decision, order of possession and monetary order, all dated January 5, 2017, were issued to the landlord for this rental unit against the male tenant, who is not named in this application (“direct request application”). The file number for that hearing appears on the front page of this decision.

Both parties confirmed that they attended a “previous hearing” at the RTB. The tenant provided the file number in her application but neither party provided a copy of the previous decision. The file number for the previous hearing appears on the front page

of this decision. I located the previous decision in the online RTB system and it states that a hearing was held on December 20, 2016, after which a decision of the same date was issued by a different Arbitrator. The landlord filed a review of the previous decision, which was dismissed by way of a review consideration decision, dated January 12, 2017, issued by a different Arbitrator, where the previous decision was confirmed.

The previous decision states that a verbal tenancy agreement was reached between these parties, even though the landlord had a written tenancy agreement with the male tenant. It also indicated that both parties agreed that the tenant paid rent and a security deposit to the landlord, after which a receipt for the security deposit was issued to the tenant by the landlord.

The tenant seeks a monetary order for \$16,437.21 from the landlord. She seeks back her security deposit of \$700.00, "emotional distress" of \$5,000.00 and numerous items of varying values including personal belongings, furniture and other kitchen and household items that she says were left behind at the rental unit after she vacated and the landlord obtained the order of possession from the direct request application.

The tenant claimed that she went with the police to retrieve her personal belongings from the rental unit but the landlord had already thrown everything out. The tenant provided a police file number in her application and claimed that the police told her that would be sufficient. No police officers attended this hearing in order to testify on behalf of the tenant, nor did they provide any written statements for this hearing. The tenant provided a monetary order worksheet indicating all the items that she lost from the rental unit with a value beside each item. The tenant claimed for furniture, kitchen and household items, and other personal belongings. The tenant did not submit any written evidence with her application, aside from a monetary order worksheet.

The landlord testified that the order of possession granted in the direct request application gave the male tenant two days until January 7, 2017 to remove his belongings and vacate the rental unit. He explained that the tenant trespassed on the property after the above date on January 19, 2017 in order to retrieve her belongings and left the door open so the landlord had to change the locks. He maintained that the tenant called the police regarding a theft at the unit and the police suggested to the landlord to deal with the matter at the RTB. The landlord claimed that he did not throw away any of the tenant's belongings at the rental unit. He said that they are not at the unit because the tenant already picked them up.

### Analysis

While I have turned my mind to the testimony of both parties and the landlord's documentary evidence, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The written tenancy agreement indicates that a security deposit of \$700.00 was payable to the landlord. The tenant claimed that she paid it and the landlord did not dispute this fact. Although the tenant did not provide a receipt from the landlord to confirm the above payment, as per the previous decision between these parties on December 20, 2016, both parties agreed that the landlord provided a receipt for the security deposit payment by the tenant. The landlord did not provide any evidence that he returned the deposit to the tenant, that he filed an application to keep the deposit or that he had written permission from the tenant to keep it. Therefore, I find that the tenant is entitled to a reimbursement of her security deposit of \$700.00 from the landlord.

I dismiss the remainder of the tenant's claim for \$15,737.21 without leave to reapply. I find that the tenant failed to provide receipts, invoices, estimates or other written documentation to demonstrate the value of the items that she said she lost. The tenant did not provide testimony as to why she was entitled to the \$5,000.00 for "emotional distress" and provided no breakdown as to how she arrived at this figure. I find that the tenant failed part 3 of the above test.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$700.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of 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: May 03, 2017

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Residential Tenancy Branch