



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP, O

### 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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord was served with the notice of hearing package via Canada Post Priority Post with Tracking that the landlord received on April 26, 2017. Both parties confirmed that the tenant did not serve the landlord with her submitted documentary evidence. The landlord confirmed that no documentary evidence was submitted.

I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act with the notice of hearing package. I find that as the tenant has failed to serve the landlord with the submitted documentary evidence that the tenant's evidence shall be excluded from the hearing. It was also clarified with both parties that although the documents were excluded that the tenant was free to refer to the material that it contained. Neither party raised any service issues.

At the outset the tenant clarified that she was only seeking a monetary claim for recovery of \$253.33 for pro-rated rent as the landlord had locked her out and for moving costs of \$400.00 for being illegally evicted without proper notice. The landlord confirmed his understanding of the tenant's claim. The tenant confirmed that the

remaining portions of her application were made in error and that no further action was required.

### Preliminary Issue

During the hearing the tenant claimed that she also seeks recovery of the \$375.00 security deposit. Both parties confirmed that the tenant has not provided her forwarding address in writing to the landlord. Both parties confirmed that the tenancy ended on April 30, 2017 when the tenant was able to retrieve all of her personal belongings on April 30, 2017.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

However, in this case, both parties have confirmed that the tenant has failed to provide her forwarding address in writing to the landlord for the return of the security deposit. As such, I find that the tenant's request for return of the security deposit to be premature and dismiss this portion of the claim with leave to reapply.

At the end of the hearing the tenant provided a new mailing address.

### Issue(s) to be Decided

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

### 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.

Both parties confirmed that this was a verbal tenancy agreement in which the tenancy began on November 1, 2011 on a month-to-month basis. Both parties agreed that the monthly rent began at \$750.00 and was raised approximately 1 year later to \$760.00 per month. Both parties agreed that a \$375.00 security deposit was paid.

The tenant seeks a monetary claim of \$653.33 which consists of:

\$253.33	Return of Rent (Pro-rated) for 10 day period that the landlord refused entry to the rental premises
\$400.00	Moving Costs

The tenant claims that she was illegally evicted from the rental premises without proper notice. The landlord confirmed in his direct testimony that no proper notice was given to the tenant as he was following the advice of the police. The tenant stated that upon her return from a cruise she found that the locks had been changed by the landlord which prevented her from accessing the rental premises from April 20 to April 30, 2017. The landlord confirmed that he had changed the locks without notice to the tenant. Both parties confirmed that supervised limited access was given to the tenant to pack her belongings and move them on April 30, 2017. The tenant seeks the pro-rated amount of rent for the 10 days that she was not given access to the premises for \$253.33. The tenant also seeks \$400.00 in moving costs due to the illegal eviction. The landlord disputes this claim stating that the tenant has not provided any proof or receipts for this expense.

### 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, I accept the undisputed affirmed evidence of both parties and find that the landlord did change the locks to the rental premises without proper notice or an order from the Residential Tenancy Branch. The landlord confirmed in his direct testimony that he had changed the locks preventing the tenant from accessing the rental property at the advice of police without legal authority. On this basis, I find that the tenant has established a claim for return of the pro-rated amount of \$253.33 for the remaining 10 days of April 2017 as claimed. On the tenant's second item of claim of \$400.00 for moving expenses, I find that the tenant has failed. Although the landlord has confirmed that he had illegally evicted the tenant without proper notice, the landlord has disputed this claim. The tenant has failed to provide sufficient evidence to support the claim of

\$400.00 in moving costs. The tenant admitted that she did receive a receipt via email, but did not provide a copy for the dispute.

The tenant has established a total monetary claim of \$253.33.

Conclusion

The tenant is granted a monetary order for \$253.33.

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 31, 2017

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Residential Tenancy Branch