



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HYPHEN HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing dealt with a tenant's application for return of the security deposit and monetary compensation for damage or loss under the Act, regulations or tenancy agreement, as amended. At the originally scheduled hearing date both parties appeared. After hearing preliminary issues from the parties I ordered the landlord to produce further documents and I adjourned the hearing. An Interim Decision was issued and should be read in conjunction with this decision.

During the period of adjournment the landlord submitted the documentation so ordered. At the reconvened hearing only the tenant appeared. The tenant confirmed receipt of the additional documentation from the landlord. Despite receiving evidence that the individual named as the landlord is bankrupt and the corporate landlord has been dissolved, the tenant stated that he wished to proceed with his claim. I accommodated the tenant's request to proceed as collection or enforcement of a Monetary Order after a tenancy has ended is outside of the role of the Residential Tenancy Branch and is up to the appropriate forum, such as the Small Claims court.

### Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation for damages or loss under the Act, regulations or tenancy agreement in the amounts claimed, as amended?
2. Has the tenant established an entitlement to return of the security deposit?

### Background and Evidence

The tenant testified that there was a written tenancy agreement executed with the landlord but that he no longer has a copy of it. The tenant stated that the tenancy started in March 2016. The tenant could not recall with any certainty the amount of the monthly rent, testifying that it was \$350.00 or \$400.00 or \$500.00 or thereabouts. The

tenant also testified that he could not recall exactly how much was paid for the security deposit although I noted the tenant had indicated it was \$250.00 in filing his hearing documents.

The tenant could not recall how the tenancy came to an end. The tenant acknowledged that he probably received an eviction notice but he could not recall the type of eviction notice it was or the reason it was issued. The tenant testified that the last month he paid rent for was September 2016 or October 2016. I noted that in filing his hearing documents the tenant had indicated the last month of tenancy was September 2016.

The tenant testified that he was threatened into removing his possessions from the rental unit by four men who took him for a walk around the block and threatened him. The tenant described the men as being gang members associated with the landlord. The tenant stated that he had paid rent for September 2016. As for the landlord's motivation to remove the tenant from the rental unit despite receiving rent, the tenant stated that this is what the landlord does to tenants: collects their rent, then forcibly removes them and then re-rents the unit to other tenants so that he can collect rent twice.

The tenant testified that the building manager permitted the tenant to put his possessions in a storefront that is located on the lower level of the building and the building manager had told him he could store his belongings in the store front for 30 days; however, when he returned only a few days later he noticed many of his possessions were in or around a dumpster in the adjacent alley. The tenant observed people rummaging through his possessions and walking away with them and that he observed his fireplace in the landlord's unit.

The tenant testified that he tried to retrieve his possessions from the dumpster; however, the landlord's staff persons only gave him a few minutes to do so before threatening to him with physical harm again.

The tenant seeks compensation from the landlord for the items he was not able to retrieve from the dumpster. The tenant provided a listing of possessions he alleges were missing or stolen with a corresponding amount for each item that totalled \$6,430.00. I explored the tenant's valuation with respect to one of the more expensive items on the list: a king size bed the tenant valued at \$1,000.00. The tenant acknowledged that he paid only \$200.00 or \$300.00 for the bed a number of years prior but he submits that it would cost \$1,000.00 to replace the bed.

The tenant also seeks to recover rent for 2/3 of September 2016 in the sum of \$288.00 for being threatened out of the rental unit in September 2016 and paying rent for September 2016.

In addition to the above, the tenant seeks return of the security deposit in the amount of \$250.00. The tenant acknowledged that he did not provide the landlord with a forwarding address prior to filing this Application for Dispute Resolution. The tenant acknowledged that the address provided on the Application for Dispute Resolution is not an address where he can receive mail.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities or preponderance of evidence. 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.

Where the landlord seeks to bring a tenancy to an end, section 44 of the Act provides for ways it must end. Generally, the landlord must end a tenancy by serving the tenant with the appropriate notice to end tenancy. Further, section 57 of the Act provides that a landlord must not take possession of a rental unit without having a court order and the Residential Tenancy Regulations provide rules for dealing with storage of a tenant's abandoned possessions. In this case, the tenant acknowledged that he may have received a notice to end tenancy but his unopposed testimony suggests that the landlord may have taken possession of the rental unit by threat of physical harm and disposed of the tenant's property without the legal authority to do so which would be a violation of the Act and the Regulations.

Although the tenant has suggested the landlord violated the Act and Regulations with respect to taking possession of the rental unit and disposing of the tenant's property, I find the tenant has not sufficiently satisfied me as to the value of his missing possessions. As seen in the test for damages outlined above, an applicant bears the burden to establish the value of the loss claimed. In hearing from the tenant, I found

his submissions to be somewhat evasive and non-responsive to my questions and in providing me with a time line of events the tenant had a tendency to omit information concerning his actions and gave generalizations about the landlord's actions and his gang affiliation and illegal activities. Also of consideration is that the tenant could not recall the amount of rent or security deposit paid for the rental unit with any certainty; and the tenant could not recall whether he received an eviction notice or the reason for eviction notice. Accordingly, I find the tenant's memory is not overly reliable; yet, the tenant appears to have made a list of his possessions from memory. Further, after examining the tenant about the valuation of the bed I found the tenant's valuation to be exaggerated and unsupported. Where a party claims to have lost personal property and seeks to recover the value of such from the other party, I find it reasonable to expect the applicant would provide some form of corroborating evidence to establish the value of the item such as receipts, invoices, print-outs or photographs or price lists of similar items for sale at a store or on-line. For all of the above, reasons, I find the tenant failed to provide sufficient proof as to the value of his losses with respect to his personal possessions and I dismiss this portion of his claim.

Considering the tenant's poor recollection as to the amount of the rent payable under the tenancy agreement and lack of proof the tenant paid rent for September 2016 I find the tenant failed to provide sufficient evidence to satisfy me he is entitled to recover \$288.00 in rent from the landlord for the month of September 2016 and I dismiss this portion of the tenant's claim.

As for the tenant's request for return of the security deposit, I find the tenant was premature in seeking its return since he did not provide the landlord with a forwarding address in writing prior to making this Application for Dispute Resolution. Furthermore, the tenant acknowledged that the address provided by the tenant in filing this Application for Dispute Resolution is not an address where the tenant may receive mail. As provided under section 38 of the Act, a tenant must provide the landlord with a forwarding address in writing before the landlord is required to take action with respect to either refunding the security deposit or making a claim against it. The time limit for providing the landlord with a forwarding address in writing is within one-year of the tenancy ending. The tenant remains at liberty to provide the landlord with a forwarding address in writing and if the landlord does not take action to refund it or make a claim against it the tenant may file another Application for Dispute Resolution and seek return of double the security deposit.

Conclusion

The tenant's claims for compensation for damages or loss have been dismissed due to insufficient evidence.

The tenant's request for return of the security deposit was pre-mature and is dismissed with 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: June 21, 2017

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Residential Tenancy Branch