



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP, OPT, AAT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for an order that the landlord return the tenant's personal property, an order that the landlord allow access to the rental unit, an order of possession for the rental unit, and monetary compensation for damage or loss under the Act, regulation, or tenancy agreement.

The tenant attended the hearing with a witness and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence and to make submissions.

As the landlord did not attend the hearing, service of the tenant's application and notice of hearing was considered. The tenant testified that she provided the landlord with these materials on or about May 19, 2017, by handing them to her personally. The tenant's witness testified that she had observed this. In accordance with section 89 of the Act, I find that the landlord was duly served with the tenant's application.

At the outset of the hearing the tenant advised that she had not provided the landlord with her evidence.

Also at the outset of the hearing the tenant advised that she was no longer residing in the rental unit. As a result she withdrew her application for an order of possession of the rental unit and for an order that the landlord provide access.

### Issue(s) to be Decided

Is the tenant entitled to an order that the landlord return her personal property?

Is the tenant entitled to compensation?

### Background and Evidence

The tenant testified that she moved into the rental unit to help care for her cousin, who was ill. She and her cousin lived together there for a short time before her cousin died on May 7, 2017.

There was no rental agreement but the landlord had filled out a shelter information form, which the tenant submitted in evidence. The landlord signed that form on April 4, 2017. It indicates a rental start date of April 2, 2017 with a rent of \$375.00 per month for a self-contained unit or room. It also indicates that a security deposit of \$187.50 is required. It also indicates that the tenant shares a kitchen or a bathroom with the owner but the tenant advised this was not actually the case.

The tenant further testified that she intended to remain in the rental unit but was late with May's rent because she had been working less while her cousin was dying. After her cousin died she notified the landlord of the death, and also asked if there was rent owing. The landlord advised that the cousin owed rent for April and May.

The landlord agreed to accept payment from the tenant for rent for May on May 15. However, when the tenant was unable to provide the landlord with the amount owing by that date the landlord simply changed the locks. The tenant provided photographs of the rental unit with a padlock on the door. The tenant understood that the landlord did not think he needed to end the tenancy in a way that was compliant with the Act because she was not a tenant. The landlord then had her forcibly removed by the police. She took what she was able to take at the time in a small car. She could not get back into the rental unit after that.

The tenant further testified that the landlord then allowed his family members and/or neighbours into the rental unit to take whatever they wanted, and then threw most of the remaining contents away. The tenant's witness confirmed this. The tenant also provided a letter dated May 28, 2017 from another person, RF, including the following:

On May 19, 2017 I . . . was walking by my good friend's . . . place whom recently passed away and I notice a big blue bin outside his place and there were 2 women outside I interduced myself and asked if they were there . . . they said they were his cousins and that the owner wasn't letting them in . . . to get his things and locked them out. I know the owner . . . and asked if he would just give us till tomorrow to clean the place out he agree and unlocked the door for me. There were a lot of valuables and antiques about 30 min after I was there these guys showed up and told me to get out and I said listen this isn't your stuff don't

touch anything let me get ahold of the family before you do anything. L they said and for me to leave. So I left and stood outside while they start to throw my friend and his cousins stuff out the window. So the whole 2 bedroom full of values TVs antiques laptops DVDS stereos tinker tanker things that were very old. [Reproduced as written]

As a result of the landlord's conduct the tenant was left without a home, without her clothes and other belongings. She was also kept from accessing her food.

The tenant advised that some of the contents in the rental unit were hers and some had belonged to her cousin. The contents included furniture, appliances, clothing, food, and collectibles.

### Analysis

The landlord did not attend at this hearing and the tenant's affirmed testimony was therefore undisputed. I accept the tenant's evidence that she and the landlord had a tenancy agreement, under which the tenant would pay \$375.00 monthly beginning April 2, 2017.

Although rent was owing for May 1, 2017, the landlord padlocked the front door of the rental unit rather than issuing a 10 Day Notice to End Tenancy for Unpaid Rent. Restricting access in this manner is in breach of the Act.

Landlords are required to store and inventory a tenant's personal property for 60 days when a tenant has abandoned that property (Part 5 of the Regulation). This tenant did not abandon her property, however, and the landlord has not stored her belongings on her behalf in any event. Section 30 of the Regulation states that a landlord must exercise "reasonable care and caution" to ensure that the tenant's property does not deteriorate and is not damaged, lost or stolen. I find that the landlord is in breach of the Regulation as a result of his seizure and/or disposal of the tenant's personal property.

Section 65(1)(e) authorizes me to order the landlord to return personal property belonging to the tenant that has been seized by the landlord in breach of the Act. I order the landlord to return the tenant's personal property to her no later than June 30, 2017.

If the landlord fails to do so, the tenant may reapply for compensation for the value of her lost property, provided can establish the items lost and their value.. If the tenant

does reapply, she must serve the landlord and the Residential Tenancy Branch with her new application, notice of hearing, and all supporting evidence.

Conclusion

**The landlord is ordered to return to the tenant all of her personal property that was seized by the landlord in May, 2017 no later than June 30, 2017.**

**The landlord is cautioned that if he does not return the tenant's belongings to her by this date, the tenant may apply for compensation for the value of the items that were removed or allowed to be removed.** The landlord may wish to ask the tenant for a list of her (as opposed to those of her cousin) so that he can ensure he returns them.

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