



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GRARCY ENTERPRISE LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC   MNSD

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated November 24, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- a monetary order requiring the Landlord to return all or part of the security deposit or pet damage deposit.

The Tenant attended the hearing in person but provided no testimony and made no submissions. Rather, she relied on the submissions of a friend and advocate, D.H. The Landlord was represented at the hearing by M.R., an agent, who provided affirmed testimony.

Both parties acknowledged receipt of the other's documentary evidence, and no issues were raised with respect to service or receipt. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

With the agreement of the parties, and pursuant to section 64 of the *Act*, I amend the Tenant's Application to reflect the correct name of the corporate Landlord, as stated on the tenancy agreement submitted into evidence by the Landlord. The Landlords initially named on the Application have been removed.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

2. Is the Tenant entitled to an order that the Landlord return of all or part of the pet damage deposit or security deposit?

### Background and Evidence

The parties agreed the tenancy began on December 1, 2014, but disagreed about the date the tenancy ended. On behalf of the Tenant, D.H. submitted the Tenant was locked out of her rental unit on February 28, 2015, which was denied by M.R. M.R. testified the Tenant left the rental unit without notice on or about March 3, 2015. The parties agreed rent was due in the amount of \$1,300.00 per month, and that the Tenant paid a security deposit of \$650.00 and a pet damage deposit of \$650.00, which the Landlord holds.

The Tenant claimed \$25,000.00 for losses incurred at the end of the tenancy. On behalf of the Tenant, D.H. submitted that when the Tenant returned home from work on February 28, 2017, the Landlord had changed the locks and she could not access the rental unit. She had no access for approximately two weeks; her belongings and her dog were gone. He testified that the Tenant was essentially on the street, and that the Tenant was forced to live in a hotel for six weeks at a cost of \$140.00 per day, although he indicated he paid for about one week of the Tenant's hotel accommodation.

D.H. referred me to an audio recording of a conversation he had with M.R. He submitted that M.R. was made aware the conversation would be recorded, which was denied by M.R. In any event, the recording documents a conversation in which the Tenant and D.H. confront M.R. with respect to compensation for the Tenant's missing belongings. At one point, M.R. acknowledged she changed the locks and had a court order to do so, but later stated she did not. I also note D.H. identified himself to M.R. as a lawyer, but did not identify himself as such during the hearing. The remainder of the recording was primarily of D.H. making statements of his understanding of residential tenancy law and trying to negotiate a monetary payment from the Landlord.

The Tenant also included with her documentary evidence a list of items including clothing, a sewing machine, linens, cosmetics, electronics, and pet accessories. The estimated value of the items was \$15,870.00.

In reply, and on behalf of the Landlord, M.R. testified that the Tenant and her boyfriend were "nothing but trouble" from the moment they moved into the rental unit. According to M.R., noise and drug activity were concerns, and notices to end tenancy were issued. M.R. also testified that she observed two young men in the rental unit in the Tenant's

absence. They told her the Tenant had rented it to them. Although the two men subsequently left, the Tenant did not return.

Further, M.R. testified that, in light of the events described above, the police were called. When they attended, they authorized M.R. to enter the rental unit and found drug paraphernalia inside. M.R. testified that police asked her to take the Tenant's dog, which appeared to have been neglected, but not to return to the rental unit. She testified that she took care of the dog for two days until the Tenant's boyfriend came to pick it up.

According to M.R., some of the Tenant's belongings were put into storage, but were subsequently stolen. She also testified that the Tenant did return to collect some of her belongings, but arrived in a taxi rather than in a truck. Although she believed it to be on or about March 3, 2015, D.H. advised that the Landlord's documentary evidence suggested this occurred on March 12, 2015.

In addition, M.R. testified that the Tenant had painted blinds black without authorization, and had left the rental unit with water damage from an overflowing toilet.

The Tenant's advocate, D.H., denied the Landlord's version of events.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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. Awards for compensation are provided for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant

must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

I find that the Tenant's claim for losses for belongings she alleged were wrongly disposed of by the Landlord is dismissed for the following reasons. First, this aspect of the claim was not adequately particularized, as required by section 59 of the *Act*. For example, the Tenant did not submit a monetary order worksheet with a breakdown of the claim. Further, the amount claimed on the Application was \$25,000.00, whereas the estimated value of the Tenant's loss was calculated to be \$15,870.00. There was no explanation provided for this discrepancy.

Second, while I accept the locks on the Tenant's rental unit were changed, I find there is insufficient evidence before me to conclude the Tenant's alleged loss stemmed from a violation of the *Act*, regulation, or a tenancy agreement. The Landlord testified to her belief the tenant had left the rental unit and took steps to secure it. There is also insufficient evidence before me that the Tenant took steps to remove her belongings, or previously disputed the Landlord's actions.

Finally, the Tenant submitted into evidence a type-written page providing an itemized list of the Tenant's belongings and the estimated value of each. She did not submit hotel receipts, receipts for clothing she had to replace, photographs, or other documentary evidence in support of the value of the loss. As a result, I find there is insufficient reliable evidence of the value of the Tenant's alleged loss.

The Tenant also sought an order requiring the Landlord to return all or part of the security deposit or pet damage deposit. Section 38(1) of the *Act* confirms that a landlord's obligation to return the security deposit is triggered only on receipt of a tenant's forwarding address in writing. In this case, there is insufficient evidence before me to conclude the Tenant provided the Landlord with her forwarding address in writing. Section 39 of the *Act* states:

*Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

*(a) the landlord may keep the security deposit or the pet damage deposit, or both, and*

*(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.*

[Reproduced as written.]

The Tenant testified she was locked out of the rental unit on February 28, 2015. The Landlord's agent testified the Tenant vacated the rental unit on or about March 3, 2015. Accepting the later of these dates, the Tenant had until March 3, 2016 to provide the Landlord with a forwarding address in writing. As noted above, there is insufficient evidence before me that she did so. As a result, the right of the Tenant to have the security deposit or pet damage deposit returned to her was extinguished. This aspect of the Tenant's claim is dismissed.

The Tenant's Application is dismissed, without leave to reapply.

Conclusion

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: August 11, 2017

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Residential Tenancy Branch