



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, RPP

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$3200
- b. An order that the landlord return personal belongings to the Tenant
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the tenant and agent for the landlord. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 14, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for the return of personal property?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began in April 2015. The parties agree the rent was \$1100 per month payable in advance although the tenancy agreement states it was \$300 per month.

The tenant did not pay a security deposit. The tenant lived in the upstairs portion of the rental property. The landlord lived in the basement.

The landlord and the tenant's sister were involved in a personal relationship that ended in or about April 2016. There is a great deal of animosity that has occurred as a result of that break up.

There is a handwritten portion to the tenancy agreement on the first page that states:

"Hydro, cable TV, internet, Gas Bills will all be in the Renters Name. Renter is responsible to pay. Renter responsible for maintenance of House and yard. An will be reimbursed by owner."

The boxes on the second page of the tenancy agreement indicate that Electricity, heat, cablevision, are not included with the rent.

The tenant has paid the Fortis, hydro and cable bills for the period of the tenancy agreement.

The landlord was out of town for extended periods. He has a house in Newfoundland and another house in Mexico which he spends time in.

The tenant testified that when she was leaving on May 31, 2017 she asked the landlord to return two cable boxes, a lawnmower, a chainsaw and tools but the landlord refused to do so. .

The landlord refused to accept the payment of the rent for May. On May 31, 2017 the parties attended an arbitration in which the arbitrator recorded a settlement where the parties mutually agreed to end the tenancy on May 31, 2017 and an Order of Possession was issued for that date.

The landlord did not attend the hearing in person. However, certain documents were provided. This included a letter dated May 12, 2017 where the landlord states the lawnmower was a joint purchase and he would return the lawnmower if the tenant gave him \$150 (1/2 of the cost of the lawnmower). A letter dated June 16, 2017 was produced in which he states on the date he was served with the within application he went out for a few hours and when he returned he discovered that his bedroom had been gone through with his pain medication, approximately \$300 to \$400 in cash and

the cable boxes were taken. There was no evidence of a break in. However, his former tenant (the applicant) still had possession of the keys.

### Analysis

With regard to each of the Tenant's claims I find as follows:

- a. I dismissed the Tenant's claim of \$3200 for reimbursement of the Fortis, Hydro and Cable bills without leave to re-apply. I am satisfied based on the evidence presented that the tenant agreed to be responsible to pay those bills. Electricity, heat, and Cablevision were not checked off on page 2 of the tenancy agreement indicating they were not included with the rent. I prefer the landlord's interpretation of the handwritten portion on page 1. There is a period after the section stating the tenant was responsible to pay the hydro, cable, TV internet and Gas bills. This separates the section paragraph which states the landlord would reimburse the cost of maintenance and yard work. This interpretation is consistent with how the parties conducted themselves as the tenant paid the bills during the course of the tenancy.
- b. The tenant sought an order for the return of the following items of personal belongings:
  - 2 cable boxes,
  - A lawnmower
  - Tools,
  - A chainsaw

The landlord failed to attend the hearing in person. On the basis of the disputed evidence presented at the hearing I determined the tenant owned two cable boxes, a lawnmower and a chainsaw. Further, I determined the tenant requested the landlord return her belongings on May 31, 2017 but the landlord refused to do so.

Section 26(3) provides as follows:

### **Rules about payment and non-payment of rent**

**26 (3)** Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- (a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

I determined the Tenant is entitled to an order for the return of the goods withheld by the landlord. I ordered the landlord return the two cable boxes, the lawnmower and the chainsaw by August 31, 2017:

I dismissed the claim for the return of Tools without leave to re-apply as the claim is not specific enough.

If the landlord fails to return those items of personal property the Tenant has the right to file another application seeking a monetary order.

Conclusion:

I dismissed the tenant's monetary claim. I ordered that the landlord return the two cable boxes, the lawnmower and the chainsaw by August 31, 2017. As the tenant has been successful with half of her claim I ordered the landlord to pay to the tenant the sum of \$50 which is half of the cost of the filing fee.

**This decision is final and binding on the parties.**

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 09, 2017

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Residential Tenancy Branch