



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RPP

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord return the tenant's personal property.

The tenant attended the hearing with a Legal Advocate, 2 individuals for support and 3 witnesses. The tenant and all 3 witnesses gave affirmed testimony. The landlord also attended the hearing, accompanied by Legal Counsel and 2 witnesses. One of the landlord's witnesses gave affirmed testimony. The parties were given the opportunity to give submissions and question those who testified.

One of the photographs provided as evidence by the landlord was missing in the tenant's copy of that evidence, but the tenant received it at a later date and does not oppose inclusion of it. No other issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of missing items from the rental unit at the end of the tenancy?
- Has the tenant established that the landlord should be ordered to return the tenant's personal property?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on August 15, 2016 and ended on March 31, 2017. Rent in the amount of \$1,000.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit from the tenant, both of which have been returned to the tenant.

The parties had had a dispute and the tenant had given notice to end the tenancy. At the start of March, 2017 the tenant tried to get into the garage with her key but the door was locked from the inside and the tenant couldn't access it. The tenant had stored some horse tack in there. The tenant had been given a letter saying that the tenant wasn't allowed to talk to the landlord, and the landlord's daughter said the tenant would get the items back when the utilities were paid. The tenant sent a letter to the landlord by registered mail requesting that the landlord contact the tenant's social worker to meet, but the landlord didn't reply and the tenant never did get access.

A number of people assisted the tenant with moving out of the rental unit, and the tenant's mother tried to open the garage door but it was still locked from inside, and none of the tenant's belongings from the garage got moved.

The tenant participated in a walk-through at the end of the tenancy on April 1, 2017 with the landlord, her daughter and 2 other people. The garage was not inspected at that time, and the landlord's people were quite hostile, finding things wrong, and the garage items were not addressed. The tenant was intimidated and uncomfortable. At no time did the landlord talk to the tenant about the garage door sticking commencing in January each year, and at no point during that walk-through did the landlord allow the tenant in the garage.

The tenant claims \$1,500.00 and \$800.00 for replacement of 2 saddles, and has since provided receipts for \$1,200.00 and \$896.00 respectively. One saddle was purchased used about a year prior and the other about 6 months before that. Saddles should be useful for 10 or 15 years.

**The tenant's first witness** (CR) testified that she has been riding horses with the tenant for about 10 years, and was present with the tenant when the tenant moved out of the rental unit and during the walk-through with the landlord. The whole house including the garage was completely locked, and there was no offer by the landlord to open the garage. The landlord's stance was very hostile. The witness has experience with move-outs having assisted her sister on many occasions by taking care of property, and has never experienced a move-out so hostile. The landlord acted with extreme animosity as if the tenant had destroyed her home. The witness was very uncomfortable and testified that

she couldn't imagine the tenant being a threat to anyone. The tenant values others' property and is very respectful. The landlord had a pre-conceived decision that the tenant owed the landlord money.

The witness sold a saddle to the tenant and testified that it's important for a saddle to fit properly for the comfort of the horse by preventing sores, and due to the danger of getting bucked off due to an uncomfortable saddle. The tenant now has to borrow a horse because the saddle for her horse is missing.

**The tenant's second witness** (SH) testified that the tenant is her daughter, and the witness was present when the tenant was moving out of the rental unit. The tenant and the witness tried to get into the garage and the tenant's key would unlock it but something was stopping it from opening. The landlord didn't try.

The witness bought her granddaughter a saddle for \$800.00 and a gel pad costing \$380.00 or \$390.00 in July or August that year, which should last 4 years.

The tenant has been living with the witness since moving out of the rental unit. The tenant has had to borrow a saddle, but couldn't borrow one for the witness' grand daughter, so it had to be replaced to fit. Good quality equipment that the tenant had is all gone.

**The tenant's third witness** (GH) testified that he kept one of his horses at the rental property. The witness was present at the rental unit the month of the move-out and the tenant gave the witness a key for the garage. The witness heard a click and there was a deadlock on the inside preventing the door from opening. The witness asked the landlord's daughter about it who said she had paperwork on it but wouldn't show it and walked away. The witness also had some tools in the garage that the witness didn't really care about, however the witness also assisted moving furniture out of the rental unit for the tenant, and tried the door again without success. There was no offer from the landlord or the landlord's agents to open the door or to get tack out. The landlord hid in the house taking photographs from the window. The witness knocked on the landlord's door but the landlord wouldn't answer. The landlord's truck was in the driveway and the witness knew the landlord was home, but would not come to the door.

**The landlord's witness** (AN) testified that she is the landlord's daughter and keeps horses on the rental property so attended 3 times per day.

The building shifts in January each year preventing the door from closing, so the witness' husband made some sort of adjustment. The witness' horse tack was in there and there was no room in there for the tenant's tack. The witness and the landlord had found the door left open in January, 2017 and asked the tenant if there was anything she needed in

there. Nothing was needed by any of the parties, but the tenant could have accessed the garage from the landlord's door. All the tenant would have to do is consult with the landlord, the witness or her husband. There was always someone there.

There was no dead bolt inside, but a door knob key-lock and the tenant had a key. The garage is heated, but the only reason the door wouldn't open in March, 2017 was because of the building shift.

The witness denies ever having a conversation with the tenant about unpaid utilities.

**The landlord's Legal Counsel submits** that evidence shows there was no money owed to the landlord so there was no reason for the landlord to take the tenant's tack. The garage door jams in January each year and the tenant could have accessed it through the landlord's side if the tenant had asked. There was no saddle in the garage.

The parties had been to a hearing previously, and counsel provided a Residential Tenancy Branch file number. The landlord had served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was disputed by the tenant, and the landlord made an application for a monetary order. Both applications were heard together, and the resulting Decision was in favour of the tenant for return of the deposits.

**The tenant's Legal Advocate** submits that the landlord's witness confirmed that the tenant had the equipment. The evidence of the landlord is contradictory saying that the door was stuck open or closed. The landlord made an allegation of unpaid utilities and did in fact block access to the garage and the tenant's items, and failed to respond to any letter from the tenant.

**In Rebuttal, the landlord's Legal Counsel submits** that the landlord's evidence is not contradictory. The landlord's witness said she's seen that the tenant had tack in the garage, and that access would be provided from the landlord's side. The landlord never withheld the tenant's property for unpaid utilities.

### Analysis

I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have reviewed the Decision of the previous hearing, and the Analysis portion states, in part:

"I find that the utilities were included in rent with respect to the tenancy agreement.

"I find that it is unclear (and therefore unenforceable) how the "excess utilities" are calculated in the paper entitled "Utilities". There is only one meter and therefore it is not clear how the utilities could be divided up between the residence and the barn.

"There may be additional utility charges with respect to utilities used by AN, JH and TH under the "Horse Agreement", but any such claim that the Landlord may have under the "Horse Agreement" is not within the jurisdiction of the Residential Tenancy Act.

"Therefore, the Landlord's claim for unpaid utilities under the tenancy agreement is dismissed. I have found that any payment towards unpaid utilities is not within the Act's jurisdiction and therefore I make no Order with respect to the disposition of the Tenant's certified cheque in the amount of \$202.65."

It is clear that the landlord believed that utilities were owed by the tenant, and perhaps there are, however the Arbitrator found that if so, the *Residential Tenancy Act* did not apply. The Arbitrator found that utilities were included in the rent, and the landlord was not successful in obtaining a monetary order. Therefore, contrary to the evidence of the landlord and testimony of the landlord's witness, I accept the tenant's version of events; that the landlord indicated that the garage would be opened when the tenant paid the utilities. I find that to still be the case and the landlord is withholding the tenant's belongings.

I have reviewed the evidentiary material of the parties and have considered the testimony of the tenant and witnesses, and the submissions of the tenant's Legal Advocate and the landlord's Legal Counsel.

On March 22, 2017 the tenant provided the landlord with a forwarding address in a letter, which also requests access to the garage to get the tenant's horse tack and equipment. Another letter followed from the tenant's Legal Advocate, dated May 29, 2017, requesting the items be returned. The landlord replied with a very brief note stating that the tenant had retrieved all belongings when she moved out. Another letter from the tenant's Legal Advocate followed, stating that the tenant had not been permitted to get into the garage to obtain her items because of money owed.

The landlord did not testify in this hearing, and the landlord's daughter and Legal Counsel submit that the door jams in January each year. When a tenant moves out of a rental unit,

the onus is on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, which includes the garage. The landlord failed to do so, and I prefer the testimony of the tenant that the landlord refused entry because the landlord felt the tenant owed money.

With respect to quantum, I accept the receipts provided by the tenant, being \$1,200.00 for one saddle and \$896.00 for the other. No supporting evidence has been provided to establish the costs of the rest of the items on the tenant's Monetary Order Worksheet, and therefore, I decline to order the landlord to compensate for those items.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,096.00.

This order is final and binding and may be enforced.

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: November 06, 2017

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Residential Tenancy Branch