



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDC FF

### Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary award for money owed or compensation for loss under the *Act* pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Only the applicant tenant attended the hearing. The tenant was provided a full opportunity to present submissions, undisputed testimony and evidence to the hearing.

The tenant explained that he sent a copy of his Application for Dispute Resolution to the landlord by way of Canada Post Registered Mail on July 5, 2017. A copy of the Canada Post tracking number was provided to the hearing by the tenant. Pursuant to sections 89 & 90 of the *Act*, the landlord is deemed to have been served with this application on July 10, 2017, five days after its posting.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee?

### Background and Evidence

The tenant explained that he entered into an oral tenancy with the landlord at the end of May 2017. Rent was established at \$1,000.00 per month, and no security deposit was collected.

The tenant said he returned to the rental unit on July 2, 2017 and found that his belongings had been removed from the rental unit, placed on the curb and that the locks had been changed. He stated that he was never served a Notice to End Tenancy, nor was her served with an Order of

Possession. The tenant explained that the landlord had unilaterally chosen to evict him from the premises without any notice, and without an order from the Residential Tenancy Branch.

The tenant is seeking a monetary award of \$6,300.00 related to expenses he incurred as a result of the purported illegal eviction. Specifically the tenant noted that he was required to rent a motel in Vernon for a period of 8 weeks at a rate of \$450.00 per week, and that he was forced to eat meals in restaurants for this time period. The tenant is seeking compensation of \$4,500.00 related to his motel expenses and \$1,800.00 for the food expenses. Furthermore, he has requested a return of the filing fee.

During the hearing the tenant provided undisputed testimony that he had entered a periodic, oral tenancy with the landlord. He said he was planning on staying in the rental unit for an indefinite period of time, when he was suddenly evicted from the rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his to his claim for a monetary award.

At the hearing, the tenant explained that he was locked out of the rental unit, and that the locks were changed without any notice, and without an Order from the Residential Tenancy Branch. The tenant was seeking compensation for the expenses he incurred as a result of this illegal eviction.

While I found the tenant to be a credible witness who was able to accurately describe, in detail, dates on which events had occurred and the manner in which he was evicted, I am unable to confirm any of the associated costs for which the tenant has applied as no proof of payments, receipts or bank statements were submitted to the hearing. Without any evidence, other than the tenant's oral testimony, I find it very difficult for me to verify the actual monetary amount of the loss or damage.

*Residential Tenancy Policy Guideline #16* notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This *Guideline* continues by explaining, "the party who suffered the damage or loss can prove the amount of or value of the damage or loss." I do not find that the tenant has shown through any physical evidence the extent of the loss he has incurred.

Despite these shortcomings, I find that a violation of the *Act* has occurred and that the tenant suffered a result of this violation.

*Guideline #16* considers this matter and says, "An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...*Nominal damages* are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infringement of a legal right

I find that an award of nominal damages would be more appropriate in this case and will issue a monetary award of \$250.00 to the tenant.

As the tenant was partially successful in his application, he may recover the \$100.00 fee from the landlord.

Conclusion

I issue a Monetary Order of \$350.00 in favor of the tenant.

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 18, 2017

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Residential Tenancy Branch