



# 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 as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 26, 2018. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- an order for the Landlord to return the Tenant's property

Both sides were represented at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

The Landlord served the Tenant his evidence (photos and invoices) in person and the Tenant acknowledged receipt of these documents. The Tenant testified that he gave the Landlord a copy of this Notice of Hearing, and his evidence. The Landlord acknowledged receiving this package. During the hearing, the Tenant stated that he made a list of the items he wants to be reimbursed for and elaborated further on his claim for monetary compensation. The Tenant stated that this most recent evidence package was given to the Landlord by email about a week ago, but no copy was provided to the Residential Tenancy Branch. The Landlord acknowledged receiving this itemized information about the Tenant's monetary claim. However, he stated that he did not go through it in detail yet because he only recently got it.

After reviewing the file and the testimony before me, I find the Tenant has failed to serve his most recent evidence (detailed list of items claimed) in accordance with the rules of procedure. Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence

to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. The evidence was exchanged late, which I find is prejudicial to the Respondent. Further, no copy was provided to me by the time of the hearing. As such, I will not consider the Tenant's late documentary evidence in this hearing, although he was allowed to testify to his claims.

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.

During the hearing, the Tenant stated that the Landlord has thrown all of his items out and he is only looking for monetary compensation, rather than the return of his items. The Landlord confirmed that all of the items the Tenant is referring to have been disposed of. Given that it is not possible for the Landlord to return these items at this point, I dismiss the Tenant's request to have these items returned to him. I will focus my analysis on whether or not the Tenant has demonstrated that he is entitled to compensation for the material items the Landlord threw out.

#### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

#### Background and Evidence

The parties testified that the tenancy commenced sometime in 2010 and the Tenant rents a carriage house located on the same property as the Landlord. The Landlord stated that over the past while, he has noticed the Tenant has been struggling to live independently, can barely walk and has worsening arthritis, such that it isn't safe for him to live alone. The Landlord stated that the Tenant has had a home support worker attending the rental unit for some time. However, the home support worker recently stopped coming because of the mess. The Landlord stated he spoke with the Tenant's support worker about the unsanitary conditions and the rat droppings all over the rental unit.

The Tenant stated that around May 23, 2017, he got a letter from the Landlord stating that the tenancy would end for "renovation purposes" effective July 1, 2017. The Tenant provided a copy of this letter into evidence. The Tenant also stated that right around this time, he checked into the hospital, and stayed for around a week.

The Landlord testified that he went to visit the Tenant in the hospital and it became apparent that the Tenant would likely not be able to continue to live on his own. The Tenant stated that he had a social worker help him find supported living accommodation next to the hospital. This happened sometime in early June 2017, when he left the actual hospital.

The Landlord stated that when he went to visit the Tenant in the hospital, the Tenant informed him that he needed help clearing his belongings out of the rental unit, and that it was okay for the Landlord to get rid of his items. The Tenant denies saying this to the Landlord and says that rent was paid until the end of June 2017, so he didn't have to leave right away.

The Landlord stated that when he talked with the Tenant, the Tenant made it clear that he could use the rent money from June 2017 to help pay for the hauling and disposal of his belongings because the Tenant couldn't do it himself. The Landlord stated that the Tenant was in the process of finding assisted living at this time, and needed help.

The Landlord provided photos of the rental unit to show that there were rat feces all over the inside of the rental property and all over the Tenant's belongings. The Landlord stated that the photos also show that the Tenant was storing some of his belongings outside (tools, furniture, etc.) and that they were rusty and valueless. The Landlord stated that the Tenant's belongings were all in very poor condition, and were old, heavily used, and not well cared for. The Landlord stated that all of the items were garbage and it cost him money to clear it all out. The Landlord stated that he set aside, and returned to the Tenant, some photos he found while he was clearing out the unit because they had sentimental value. The Landlord also stated that he also returned a special mug to the Tenant at his request.

The Landlord stated that, if anything, he should be the one getting compensated for the huge mess that was left. The Tenant stated that he is looking for \$10,000.00 in compensation for the replacement cost of all of his belongings because he did not actually give permission for the Landlord to throw them out. The Tenant stated that there were things such as books, clothing, and tools which add up to around \$6,000.00 and he also wants \$4,000.00 to compensate him for all the stress he went through. The Tenant stated that he told the Landlord it was ok for some of his friends to come by the take some of his belongings because he was not going to be returning to the rental unit.

However, the Tenant stated that he was not specific about who could come and take things, or what could be taken.

The Landlord stated that they had a junk removal company come in on June 1, 2017, to remove the Tenant's belongings, and this cost around \$900.00.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

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 in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I acknowledge that the parties disagree about whether or not the Landlord had the Tenant's permission to dispose of his belongings. However, it is not necessary for me to resolve this conflict in evidence because I find the Tenant's claim fails for a different reason: he has failed to sufficiently demonstrate the value of his loss. I have no itemization, or documentary evidence from the Tenant to substantiate what may have been lost or what any of these items may be worth. The testimony and photographic evidence from the Landlord shows that the rental unit was unsanitary, messy, and poorly maintained. It also shows that much of the Tenants belongings were older, well

used, strewn about, and that the rental unit was littered with rat droppings, and garbage. Although the Tenant stated that his belongings are worth around \$6,000.00, he has not provided any breakdown or list of any items, and he has not substantiated the value of any potential loss. I find the Tenant has provided insufficient evidence to prove a loss.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. However, since the Tenant did not pay an application fee, and obtained a fee waiver, I decline to award his request for recovery of the filing fee.

### Conclusion

The Tenant's application is dismissed, in full, 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: February 28, 2018

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Residential Tenancy Branch