



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL, FFL, RPP, FFT

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a return of personal property being held by the landlord pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's family member JB spoke on the landlord's behalf as agent (the "landlord").

As both parties were in attendance I attempted to confirm service of documents. The landlord testified that they were in receipt of the tenant's application for dispute resolution and evidence. I find that the landlord was served in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they sent their application and evidence to the tenant at the forwarding address provided by registered mail on March 23, 2018. The landlord

testified that the tenant did not pick up the registered mail and the package was returned to them. The landlord provided a valid Canada Post tracking number into evidence. The tenant disputes that they were served with the landlord's application.

Registered mail is an accepted form of service pursuant to section 88 of the Act. In accordance with Residential Tenancy Policy Guideline 12, when a document is served by registered mail even if a party refused to pick up the mail, receipt is deemed to have occurred on the fifth day after mailing. I accept the evidence of the parties that the landlord sent the hearing package to the tenant at a forwarding address provided by the tenant on March 23, 2018. Accordingly, I find that the landlord's evidence was deemed received on March 28, 2018, five days after mailing in accordance with sections 88, 89 and 90 of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the tenant entitled to an order to recover personal property from the landlord?

Is either party entitled to recover the filing fee for the application from the other?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This tenancy began in August, 2017 and ended on January 31, 2018. The monthly rent was \$1,600.00 and the tenant was also responsible for paying 2/3 of the utility bills for the rental building. A security deposit of \$800.00 was paid at the start of the tenancy. By an agreement made between the parties the security deposit was applied towards rent arrears at the end of the tenancy.

The tenant submits that they were unable to vacate the rental unit by the end of the tenancy due to weather conditions beyond their control. The tenant testified that when he attended at the rental unit on February 1, 2018 he was unable to remove all of their

property. The tenant submits that the landlord ought to have known the items were not abandoned and that they were not provided with an adequate opportunity to claim the items.

The landlord confirmed that the tenant did not remove their possessions at the end of the tenancy. The landlord testified that they had new tenants scheduled to occupy the rental unit and removed the tenant's belongings to allow the new tenancy. The landlord said that the cost of removing the items and storage is \$750.00. The landlord submitted into written evidence the receipts for removing the items.

The landlord testified that there was an arrear at the end of the tenancy as the tenant failed to pay the full utilities owed. The landlord submits that the amount of the arrears is \$309.00. The tenant testified that they agree that there was an utility arrear and said that they agree with the amount claimed by the landlord.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

The parties gave undisputed evidence that this tenancy ended on January 31, 2018 pursuant to a notice provided by the tenant. The tenant submits that they were unable to remove their items from the rental unit prior to the end of the tenancy and were not given an opportunity to do so by the landlord. I find that there is insufficient evidence in support of the tenant's submission. There is little evidence regarding adverse weather conditions that prevented the tenant from removing the items by January 31, 2018.

Even if I were to accept that the tenant was unable to attend at the rental unit prior to the end of the tenancy the parties gave undisputed evidence that the tenant was on site on February 1, 2018 to remove some of the items. The tenant submits that they were

unable to remove all of the items but I find there is insufficient evidence given as to why they could not remove all items from the rental unit.

In accordance with Residential Tenancy Regulation 24(1)(a), a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended. While the tenant submits that the landlord was informed the tenant intended to retrieve the items from the rental unit I find that the landlord was within their right to consider the items abandoned when the tenant failed to remove them after the tenancy had ended.

The landlord gave undisputed evidence that a new tenant was scheduled to move in and the items were removed from the rental unit to accommodate the new tenancy. There is no obligation on the landlord to store the tenant's possessions in the rental unit after the tenancy has ended. I find the tenant's position to be spurious and unreasonable. The tenant cannot demand or expect the landlord to house possessions beyond the date the tenancy ends.

I accept the landlord's evidence that the cost of removing the items from the rental unit was \$750.00. I accept the landlord's undisputed evidence that there is a utility arrear for this tenancy of \$309.00. The tenant gave evidence that they agree that there is a utility arrear and the figure provided seems accurate. Based on the foregoing I issue a monetary award in the landlord's favour in the amount of \$1,059.00.

As the landlord's application was successful the landlord may also recover the filing fee for this application.

I find that the landlord is holding the tenant's personal possessions that were left in the rental unit after the tenancy ended. The landlord's obligations in regards to the personal property and their ability to dispose of it are outlined in sections 25 and 29 of the Regulation. Under the *Act*, a landlord may dispose of the property in a commercially reasonable manner after storing the property for a period of no less than 60 days following the date of removal. In the present case the landlord's obligation to store the personal possessions commenced on February 1, 2018.

The landlord is within their right to dispose of the items as their statutory obligation to store the items has ended.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,159.00.

The tenant must be served with this Order as soon as possible. Should the tenant 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.

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: April 26, 2018

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Residential Tenancy Branch