



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, MND, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 19, 2018 with amendments made March 19 and 20, 2018 for:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order for the return of the Tenant’s personal property - Section 65.

I note that the amendments were to add the monetary amount being claimed and to correct the spelling of the Tenant’s last name on the Tenant’s application.

The Landlord applied on April 13, 2018 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Witness provided evidence under oath.

Preliminary Matter

The Landlord states that his wife, Landlord GK, passed away on April 17, 2018. The Landlord declined an adjournment stating that he wished to proceed.

The Parties confirm that on December 15, 2017 the locks to the unit were changed and that the Tenant was not allowed access to the unit or garage after that date. The Landlord states that the Landlord's application for dispute resolution and notice of hearing was served on the Tenant by posting it on the door of the dispute unit. The Landlord could not recall the date. The Landlord states that his now deceased wife witnessed this service and that after her passing things fell apart. Witness GI states that while he believes that the Tenant was given a copy of the application for dispute resolution in person, he did not witness this service. The Tenant states that no application for dispute resolution or notice of hearing was received by the Tenant and that the Tenant is not aware that the Landlord made an application for dispute resolution.

The Act provides the following requirements for service of the application for dispute resolution:

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is no supporting evidence of any service in person to the Tenant, as the Tenant's evidence is that no documents were provided to him and as the Act does not allow for service of the application for dispute resolution on the door of a rental unit, in particular a rental unit that is no longer occupied by the Tenant, I cannot find that service has been accomplished in accordance with Section 89 of the Act. I therefore dismiss the Landlord's application with leave to reapply. Leave to re-apply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the Tenant entitled to a return of personal property?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started in September 2015. The original rent of \$800.00 payable on the first day of each month was reduced in the first couple of months to \$700.00 per month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. The Parties mutually conducted a move-in and move-out inspection with reports copied to the Tenant.

The Tenant states the move-out inspection was conducted by a friend of the Tenant and that the Tenant's forwarding address was provided on the move-out report. The Tenant provides a copy of that report and I note that the Tenant's forwarding address is set down on the report. The Landlord states that he is not aware of having received the forwarding address. The Tenant claims return of double the security deposit in the amount of \$800.00.

The Tenant states that he was in the process of moving out of the unit when the Landlord changed the locks on December 15, 2017 after which the Tenant was not allowed into the garage or unit to retrieve his final belongings including the food in the fridge and freezer. The Tenant provides a list of property that was not returned and

states that out of the items only the engine block, engine stand and car seats were returned. The Tenant states that the engine block and car seats were returned damaged. The Tenant states that the engine block had been left in the snow by the Landlord which caused the damage. It is noted that the Tenant has not provided any photos or supporting evidence of the damage. The Landlord states that the Tenants belongings were returned to the Tenant's forwarding address on February 12, 2018. The Witness states that he returned the property to the Tenant and states that the engine block was not left in the snow, that it had been taken from the garage where the Tenant kept it and nothing was returned damaged. The Landlord states that the Tenant was told repeatedly to come and collect his belongings.

The Tenant claims return of the remaining items or compensation as set out below and states as follows:

- \$200.00 for a custom made carpet for the interior of a truck. The Tenant states that he paid \$200.00 for this carpet in July 2017. No receipt or supporting evidence of value was provided by the Tenant;
- \$500.00 for an exercise machine that was purchased new in 2015 for "about \$500.00 plus change". No receipt or supporting evidence of value was provided by the Tenant;
- \$55.00 and \$110.00 for two space heaters that were purchased new in the winter of 2016. The Tenant has since replaced these heaters for a total of \$140.00. No receipt or supporting evidence of value was provided;
- \$250.00 for a tow bar that is between 10 and 15 years old and the replacement cost is based on a new tow bar. No supporting evidence of value was provided;
- \$250.00 for two used car seats that were purchased sometime in 2016 from an auto wrecker. The Tenant states that they have since been replaced with new seats for around \$200.00. No receipt or supporting evidence of value was provided;

- \$340.00 for two winter tires that were purchased in 2017. The Tenant states that these have since been replaced with used tires for a total cost of \$150.00. No receipts or supporting evidence of value was provided; and
- \$200.00 for the cost of food that was left in the unit.

The Witness states that there was no tow bar or winter tires in the garage and that the only thing that was not returned to the Tenant was the exercise machine and the space heaters. The Witness states that it was believed at the time that the space heaters belonged to the Landlord. The Witness states that the Tenant also left some miscellaneous parts in the garage. The Witness state that the Landlord agrees that the Witness will return the bike and heaters to the Tenant. The Tenant states that he will be available to receive the bike and heaters between 11:00 a.m. and 2:00 p.m. on June 3, 2018. The Tenant provides an address for this delivery and this address is noted on the cover page of this Decision. The Tenant was provided further opportunity to directly respond to the Witness evidence and the Tenant states that the engine was damaged and that no carpet was returned but that otherwise everything the Witness said was returned was returned.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the Tenant's evidence and the notation on the move-out report I find that the Tenant provided its forwarding address to the Landlord on December 17, 2017. As the Landlord did not return the security deposit to the Tenant or make a claim against the security deposit within 15 days receipt of the forwarding address I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of **\$800.00**.

Nothing in the Act allows a landlord to end a tenancy without the provision of a written notice on an approved RTB form to the Tenant. Section 57(2) of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. There is no evidence that the Landlord ended the tenancy. There is no evidence that the Tenant ended the tenancy before the Landlord changed the locks on the unit. Even if the Tenant did end the tenancy with notice there is nothing in the Act that allows a Landlord to remove a tenant from a unit without either an order of possession issued by the RTB or a Writ of Possession issued by the Supreme Court.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As the Landlord locked the Tenant out of the unit before the Tenant was able to remove all its property I find that the Landlord breached the Act. Based on the undisputed evidence that the Witness returned all the Tenant's belongings except for the bike and heaters and given the Witness and Landlord agreement to return these items to the Tenant at the location and time provided by the Tenant I dismiss the claims in relation to the bike and heaters with leave to reapply for compensation should the Landlord fail to act as agreed.

Based on the Witness's undisputed evidence that there was no tow bar or tires in the unit and given the lack of any supporting evidence that the bar or tires were in the garage, I find on a balance of probabilities that the Tenant has not substantiated the loss of these items and I dismiss the claims for costs of these items. Given the Witness evidence that the engine was removed from the garage and not left in the snow and considering the lack of any supporting evidence of damage to the engine I find that the Tenant has not substantiated any damage to the engine and I dismiss the claim in relation to the engine. Although the Witness gave no evidence of the state of the car seats that were returned accepting the Witness evidence that the car seats were removed from the garage and considering the Tenant's evidence that the car seats

were replaced for a lower cost than claimed, that the Tenant provided no supporting evidence of the value of the car seats, that the Tenant provided no photo or other supporting evidence of damage to the car seats I find that the Tenant has not substantiated the costs claimed and I dismiss the claims in relation to the car seat. As the Tenant provided no supporting evidence of having the carpets in the garage or of having purchased the carpet and considering the Landlord's evidence that everything was returned to the Tenant except for the bike and heaters I find on a balance of probabilities that the Tenant has not substantiated any loss of a carpet. As the Landlord did not dispute that the Tenant's food was left in the fridge and freezer at the time the Landlord locked the Tenant out of the unit and given the reasonable cost claimed for such food, I find that the Tenant has substantiated the loss claimed of **\$200.00**. The Tenants total entitlement is **\$1,000.00**. As the Tenant has not disputed that Landlord GK is deceased I make the monetary order only in the name of Landlord RK.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. If necessary, this order may be filed in the Small Claims 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: June 1, 2018

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Residential Tenancy Branch