



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP MNDC FF

### Introduction

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

- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

### Preliminary and Procedural Matters – Service of Landlord's Evidence Package

The landlord acknowledged service of the tenant's Application for Dispute Resolution including the Notice of Hearing and tenant's evidence package that was served with the application.

The landlord submitted a 38 page evidence package in response which was received by the Branch on May 29, 2018. The tenant testified that he was not served with a copy of the landlord's evidence package. The landlord testified that she googled the address for service provided on the tenant's application and it did not appear to be an actual address so she did not serve a copy to the tenant.

During the hearing, I advised the landlord that I would not be accepting her evidence package as the tenant had not been served with a copy in accordance with Rule 3.15 of the Rules of Procedure.

However, after reviewing the file after the end of the hearing, I noted that the applicants address for service listed in the application appears to be the same as the rental unit

address with a minor discrepancy in how the address is written. As the tenant was no longer residing at this address at the time of the filing of this application, and there appears to be an error in the address, I find the tenant would not likely have received the landlord's evidence package even if the landlord did send a copy to that address.

In light of the above, I accepted and considered the landlord's evidence package in making this decision. The landlord's evidence package had no bearing on the outcome of this decision, as such; I find the tenant was not unduly prejudiced by not having the opportunity to review this evidence.

### Issues

Should the landlord be ordered to return the tenant's personal property?

Is the tenant entitled to monetary compensation for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy began on December 6, 2017 with a monthly rent of \$700.00 payable on the 6<sup>th</sup> day of each month. No security deposit was paid at the start of the tenancy.

The rental unit was a furnished 1 bedroom basement suite. The tenant had his own private living area which included a kitchen area, living room and a bathroom. The landlord lived upstairs. There was a door on the inside of the house separating the tenant's suite from the landlord's area which the tenant could lock and had the keys to. The entry to the house however was from a common back door. The tenant was not provided a key to this back door however with the exception of one or two occasions it was commonly left open. There was an additional padlock placed on this door and both the tenant and landlord had the key for the padlock.

The tenant testified that he met the landlord on December 5, 2017 after answering an online advertisement for the rental unit. The following day, on December 6, 2017 he paid the landlord \$700.00 and began the tenancy. No lease was originally signed however at the request of the tenant a 1 page agreement was written up by the landlord on December 22, 2017.

The tenant testified that on March 6, 2018 the landlord came into his private area without notice asking for the rent which was due on this day. He did not have the rent as his paycheck from work was delayed but testified that he could have paid it the next day. The landlord was yelling and screaming at him and he was afraid so he went

outside. Once he was outside the landlord locked the main entry door to the house, from the inside, for which he did not have a key. The tenant testified that he did not receive any 10 Day Notice to End Tenancy as required under the Act.

The tenant's mother testified that on March 7, 2018 the police showed up at her residence. The tenant's mother testified that the police were sent by the landlord as she reported the tenant missing. On March 10, 2018 she went with her son to pick up his belongings from the rental unit but the landlord would not open the door. The following day they called the police who went to the rental unit but the landlord would not again open the door. The tenant's mother testified that the landlord was refusing to return the tenant's belongings until he paid the outstanding rent.

The tenant testified that he had various belongings in the rental unit including but not limited to a heater, clothes, television, video games, weight set and food for himself and his pet. The tenant submitted a list of items left behind in the rental unit. The tenant is requesting an order for the landlord to return all his property and claiming \$1000.00 as loss suffered as a result of the landlord's actions. The tenant testified that he could not get back into his rental unit and he had nowhere to go. He ended up moving into his mother's basement suite and is paying \$1000.00 per month in rent. He testified that he has had to live without all his belongings for this entire time. The tenant also submitted a police report containing file #'s for the two incidents referred to on March 7, 2018 and March 11, 2018. No details of the incidents were provided on this report.

The landlord testified that there is always a padlock on the outside door for which both parties had keys. The landlord testified that nobody gets keys to the main lock on the outside door. The landlord testified that the tenant would ring the bell if the landlord happened to lock the door from the inside. The landlord testified that she did post a 10 Day Notice and other notices on the inside of the rental unit. The landlord testified that she did not kick out the tenant but rather the tenant abandoned the rental unit. The landlord testified that when she went to collect the rent, the person that was in the rental unit at the time said he was not the tenant and jumped out the window.

The landlord testified that she since advised the tenant that he could come back and get his stuff but no one ever came. The landlord testified that on March 12, 2018 someone did try to come back but she did not think it was the same person who she had rented the unit to. She requested to see the same green license from Alberta which was shown to her at the start of the tenancy but the person would not show her the same I.D. The landlord acknowledged changing the padlock on the outside door. The landlord testified that she has since left all the tenant's belongings in the rental unit as

they were. The landlord insisted that she would return the belonging if the tenant paid the outstanding 1 month's rent as he did not provide adequate notice before vacating. The landlord further argued that this was a home share and not a tenancy.

### Analysis

I find that this was a tenancy covered under the Act as both parties confirmed that the tenant had his own private living accommodation which he paid rent for and did not share any kitchen or bathroom facilities with the owner.

Section 24 of the Residential Tenancy Regulation (the "Regulation") titled **Abandonment of Personal Property** provides as follows:

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
  - (b) subject to subsection (2), the tenant leaves the personal property on residential property
    - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
    - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
  - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

I find the circumstances in this case as described by the parties do not constitute abandonment as per section 24 of the Regulation. I accept the testimony and evidence of the tenant that he was locked out of the rental unit by the landlord on March 6, 2018. I also accept the tenant's testimony and evidence that he made attempts to retrieve his personal property after being locked out. The landlord also acknowledged that she change the padlock to the outside door and that the tenant was never provided a key to this door. The landlord also acknowledged that someone did attempt to recover the personal property but she refused to let the person in as she did not believe that it was the tenant. I do not find the version of events put forth by the landlord to be very credible. Further, the landlord's insistence that the tenant pay the outstanding rent corroborates the tenant's version of events that he was locked out for failing to pay rent on time.

As per section 65(1)e of the Act, I order the landlord to allow the tenant immediate access to the rental unit to obtain all of his personal possessions. If the landlord fails to comply with this order, the tenant is at liberty to make a new application for additional monetary compensation arising out of the landlord's failure to follow this order.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

I find the landlord has not complied with this Act or the Regulation by locking the tenant out of the rental unit without first obtaining an order of possession and by refusing to return the tenant's personal property. The tenant is claiming \$1000.00 as a loss but the only supporting evidence provided by the tenant is a statement that he is now paying \$1000.00 per month in rent. I find the tenant has not provided any supporting evidence such as cancelled cheques, rent receipts or a tenancy agreement to support this increased rent payment. In either event, I find the tenant would still have been obligated to pay his monthly rent of \$700.00 had he not been locked out of his rental unit. As such, I do not accept the tenant's claim for loss based on the increased rent. However, I do accept the tenant suffered some loss for being illegally locked out of his rental unit and not having access to his belongings for a period of 3 months. I also accept that the tenant would have left behind food items for himself and his pet. However, as this loss is difficult to quantify, I award the tenant the nominal amount of \$700.00 which is equivalent of one month's rent. I find the inconvenience and loss suffered by the tenant at least equates to one month's rent.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$800.00.

Conclusion

**I order the landlord to allow the tenant immediate access to the rental unit to obtain all of his personal possessions.**

**Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of \$800.00.** 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: June 07, 2018

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Residential Tenancy Branch