



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP

### Introduction

This hearing dealt with the tenant's application pursuant to section 65 of the *Residential Tenancy Act* (the *Act*) for an order requiring the landlord to return the tenant's personal property.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's spouse (the landlord) confirmed that on May 25, 2018, they received a copy of the tenant's dispute resolution hearing package left for the landlord under the landlord's door on May 24, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. The only written evidence provided to the landlord by the tenant was a copy of the tenant's application for dispute resolution, which was included with the dispute resolution hearing package. Although the landlord submitted written and photographic evidence to the Residential Tenancy Branch (the RTB), the landlord did not send a copy of this evidence to the tenant. Since the tenant was not served with the landlord's written and photographic evidence, I advised the parties at this hearing that I could not consider this evidence.

### Issues(s) to be Decided

Should an order be issued requiring the landlord to return the tenant's personal property?

### Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy began in 2013. By the end of this tenancy, the monthly rent was set at \$595.00, payable in advance on the first of each month. The tenant gave undisputed sworn testimony that he paid a \$275.00 to the previous landlord when this tenancy began. The landlord testified that the previous owner of this property did not forward any security deposit to the landlord.

The parties gave conflicting evidence with respect to how this tenancy ended.

The landlord testified that on April 5, 2018, the tenant gave the landlord oral notice that the tenant was intending to end this tenancy by April 10 or 11, 2018. The landlord said that the tenant moved out on one of those dates and obtained a payment from the landlord to help him store his personal belongings in a "storage room" offsite, which the landlord said would cost \$175.00 per month. The landlord testified that the tenant removed his belongings of value and proceeded to work for the landlord to help with the renovation and upgrade of this rental unit and another in this rental property. The landlord testified that the landlord paid the tenant \$1,150.00 by direct deposit at 10:12 a.m. on April 21. The purpose of this payment was unclear at the hearing. The landlord also testified that a total of \$2,500.00 was paid to the tenant (including the \$1,150.00 payment noted above) in four separate payments. The remainder of these payments were made for work performed by the tenant for the landlord in the renovation of the rental property. The landlord maintained that had this tenancy ended without the tenant's agreement and with the landlord having seized the tenant's personal belongings, it is unlikely that the tenant would have been willing to work for the landlord in the renovation of the property.

By contrast, the tenant gave sworn testimony and written evidence in the form of statements included in his application for dispute resolution, in which the tenant claimed that the landlord ended this tenancy without having issued him a proper 90-day notice to end tenancy. The tenant maintained that the landlord told him that the landlord was planning to renovate the rental unit and that the tenant would have to leave the rental property. At the time that the tenancy ended, a landlord seeking to end a tenancy for landlord's use of the property for the purposes of renovations would have needed to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property on a prescribed RTB form. Depending on when such a Notice was given, this might allow a tenant to remain in a rental unit between 60 and 90 days. The tenant maintained that the \$1,150.00 payment was provided to the tenant, but was for forwarding to the other tenant in this rental building, who had also been asked to leave. The tenant alleged that the landlord changed the locks on the tenant's door and threw his belongings out, many

of them tossed over the balcony. The tenant testified that he does not believe that the landlord has retained any of his personal possessions.

### Analysis

On May 31, 2018, another arbitrator appointed under the *Act* was delegated responsibility to consider a different application from the tenant in which the tenant applied for a return of the tenant's personal property, as well as a monetary award of \$4,900.00 for the tenant's losses arising out of this tenancy. When neither party attended the hearing scheduled for that date, that arbitrator issued a decision (see file number at beginning of this decision) in which the tenant's application was dismissed with leave to reapply.

At the current hearing, I advised the parties that the application properly before me includes no reference to an application for a monetary award for losses arising out of this tenancy. To consider any type of monetary issue as part of my deliberations, the landlord would need to have been notified of the amount sought by the tenant so that the landlord would have an opportunity to respond to the case against them. To include a monetary component to my deliberations would deny the landlord a fundamental precept of the principles of natural justice. Since no monetary component was included in the tenant's application, I am only able to consider the tenant's request that the landlord return his personal property to the tenant.

In this case, both parties agreed that the landlord has not retained any of the tenant's personal property, albeit for different reasons. The landlord said that the tenant removed everything of value from the rental unit himself, and that the landlord even paid the tenant to put these items in storage. The tenant maintained that the landlord seized the rental unit by changing the locks on the doors when the tenant had paid rent until the end of the month and had control of the tenant's personal possessions that were in the rental unit when the locks were changed. However, the tenant testified that whatever personal belongings were left behind at the end of his tenancy are no longer in the landlord's possession. As such, both parties agreed that the landlord was in no position to return any of the tenant's personal belongings as the landlord does not have possession of these items.

Under these circumstances, I find that neither party is claiming that the landlord is in possession of any of the tenant's personal property. As this is the sole issue properly before me, I dismiss the tenant's current application.

Conclusion

The tenant's application for a return of his personal property is dismissed without leave to reapply. I emphasize that this finding does not affect any monetary claim that the tenant may make arising out of this tenancy.

In the event that new claims are made with respect to this tenancy, the parties are reminded that they will need to submit new copies of any written, photographic or digital evidence upon which they intend to rely to the RTB **and to one another**.

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: July 06, 2018

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Residential Tenancy Branch