



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, OLC, RPP, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's lawyer and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's lawyer confirmed that he had permission to speak on the landlord's behalf at this hearing. This hearing lasted approximately 56 minutes.

The landlord's lawyer confirmed that the landlord did not receive a copy of the tenant's original application for dispute resolution hearing package to dispute the 1 Month Notice, only the amendment to the tenant's application, asking for the remaining claims. During the hearing, the landlord's lawyer confirmed that he wanted to proceed with the hearing on the basis of the tenant's three claims aside from the 1 Month Notice. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was sufficiently served with the tenant's amendment for the remaining claims and I proceeded with the hearing based on the landlord's lawyer's consent.

The landlord's lawyer stated that the tenant was served with the landlord's evidence package. The tenant stated that he did not receive the landlord's evidence. Since I was not required to consider the landlord's evidence, which was mainly video and photo evidence of the tenant abandoning the rental unit, I do not find it necessary to record any findings regarding service of this evidence.

At the outset of the hearing, the tenant confirmed that he did not want to cancel the landlord's 1 Month Notice, as he had vacated the rental unit and did not intend to return. The landlord's lawyer confirmed that the landlord had taken back possession of the rental unit pursuant to an order of possession from July 31, 2018. Accordingly, this portion of the tenant's application, as well as the order for the landlord to comply, is dismissed without leave to reapply. I do not issue an order of possession to the landlord as it is not required.

#### Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

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

#### Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord's lawyer stated that this tenancy began on March 1, 2017, as the tenant did not know the date. The tenant testified that he was last in the rental unit on July 23, 2018. Both parties agreed that they signed a written tenancy agreement and that a security deposit of \$750.00 was paid by the tenant. The tenant said that his rent was last \$1,540.00, while the landlord's lawyer said that it was \$1,600.00 as per a Notice of Rent Increase.

The tenant seeks a monetary order of \$10,500.00 from the landlord. He also seeks the return of his personal property, which he claims he left behind at the rental unit. The tenant testified that he was in the process of moving his possessions out of the rental unit on July 23, 2018, his grandmother fell ill so he had to take care of her, and when he returned to get his remaining possessions, he was locked out by the landlord. He maintained that he did not abandon the rental unit. He said that he sent a text message to the landlord on July 26, 2018, asking to get his remaining possessions. He claimed that he wanted the ashes of his deceased partner who was living in the rental unit with him. He stated that the landlord gave the ashes to the deceased's next of kin, without the tenant's knowledge or permission, and that there is no price that can be placed on the ashes. The tenant said that he left items including clothing, shoes, laundry, a flat screen television, kitchen items such as pots and pans, a bed and a chair at the rental unit, and he wants all the items returned by the landlord. The tenant stated that his jacket cost \$120.00, his television cost \$2,400.00 and his chair cost \$75.00.

The landlord's lawyer claimed that the tenant abandoned the rental unit, the landlord followed the procedure in Part 5 of the *Act*, he took photos and videos of the tenant's possessions left behind, made an itinerary, and disposed of the items as their value appeared to be under \$500.00. The landlord's lawyer claimed that the items left behind included a chair, a couch, a bed, no kitchen items, and some clothing. He stated that the furniture appeared old and was badly damaged. He maintained that nothing can be returned to the tenant because the items have already been disposed of, and that the ashes were given to the deceased's next of kin, who wanted possession of them. The landlord's lawyer claimed that the tenant has no proof of the value of his possessions.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's application for \$10,500.00 without leave to reapply. I find that the tenant failed to provide receipts, invoices, estimates or other written documentation to demonstrate the value of the items that he said he lost. The tenant did not provide a breakdown as to how he arrived at this figure. I find that the tenant failed part 3 of the above test.

As the landlord does not have possession of the tenant's belongings, I dismiss the tenant's application for an order requiring the landlord to return the tenant's personal property, without leave to reapply.

Since the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's entire 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: September 04, 2018

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Residential Tenancy Branch