



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNDCT RPP FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for damage or compensation pursuant to section 67;
- An order for the landlord to return the tenant's personal property pursuant to section 65;
- Reimbursement of the filing fee pursuant to section 72.

The tenant attended the hearing with his mother and representative TG ("the tenant"). The tenant was given the opportunity to make submissions as well as present affirmed testimony and written evidence. TG provided affirmed testimony as a witness on behalf of the tenant.

The landlord did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 30 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code for the landlord had been provided.

The tenant testified the landlord was served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 7, 2018. Under section 90, the landlord is deemed to have received the documents five days later, on October 12, 2018. In support of service, the tenant provided the Canada Post tracking number referenced on the first page of the decision. Pursuant to sections 89 and 90, I find the landlord was served with the Notice of Hearing and Application for Dispute Resolution on October 12, 2018.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for damage or compensation pursuant to section 67;
- An order for the landlord to return the tenant's personal property pursuant to section 65;
- Reimbursement of the filing fee pursuant to section 72.

Background and Evidence

As the landlord did not appear at the hearing, the tenant provided the following uncontradicted affirmed testimony.

The tenant rented a unit from the landlord on a month-to-month basis starting September 1, 2018. The unit was a basement suite in the landlord's home. The landlord lived upstairs. Rent was \$650.00 a month payable on the first of the month and included internet. The tenant testified he paid the first month's rent for September 2018. The parties did not enter into a written agreement. The tenant did not provide a security deposit.

No condition inspection was conducted on moving in or moving out.

The tenant testified he is 18-years old. He stated that soon after he moved in to the unit, the landlord started complaining about the noise the tenant was making. The tenant said he made his best efforts to be as quiet as possible, but the landlord continued to complain to the tenant.

The tenant testified the landlord told him about mid-way through the month of September 2018 that if he did not stop the noise, the "same thing will happen to you that happened to the last people – I threw their s--t out on the lawn".

The tenant testified that the landlord cut off his access the internet mid-September. As the parties were not getting along, the tenant promised the landlord to move out at the end of the month of September 2018. He moved to a friend's home for the last week of the month to avoid any more conflict.

The tenant testified that when he returned to get his personal possessions on September 28, 2018, he discovered many of his possessions in boxes and garbage bags on the side of the street in front of the unit. The tenant submitted pictures showing

miscellaneous clothing, personal and kitchen items spilling out of half-empty containers. The tenant said that some items were broken, such as drinking glasses; broken items are visible in the photographs.

The tenant stated that it was a custom in the community in which the unit was located to leave free items on the side of the road for passers-by to take. Accordingly, the containers appeared ransacked and items were spread out as though people had been going through them. The tenant testified it was raining and the remainder of the items were wet and dirty. Some things were ruined.

The tenant testified that he immediately personally spoke to the landlord. The tenant stated the landlord would not permit him access to the unit to get any remaining possessions and told him to come back later. The tenant testified he called the police and had an incident report number. However, the police declined to assist them in what they said was a civil matter.

The tenant and his mother, TG, testified to returning several times over the next few days to try to recover the tenant's belongings. The tenant and TG testified that every time they returned to the unit, more of the tenant's belongings were on the side of the road. On one occasion, the drawers of the tenant's dresser were on the side of the road and appeared to have been ransacked.

The tenant and TG testified they called the landlord repeatedly and he refused to answer their calls. They did not gain access to the unit to recover any of the tenant's belongings.

The tenant claims for damage and loss to his personal possessions. He also claims for an order for the landlord to return his possessions. Finally, he requests an order for reimbursement of the amount of \$650.00 which he paid for rent for the month of September 2018.

The tenant and TG testified they did not have receipts for any of the tenant's personal items for which they were making a claim for compensation.

The tenant testified that included in the lost or ruined possessions are all his household items, such as four sets of bedding, several towels, sets of dishes, cutlery and cooking pots, pans and supplies. The tenant testified he had about \$250.00 worth of food in the unit, some of which he found left on the side of the road, spoiled and unusable due to lack of refrigeration.

The tenant claimed the most expensive items he was missing were diamond earrings which were a gift from a friend. He was also missing two items of gold chain jewellery, a gift from his grandmother. TG affirmed the tenant's evidence with respect to all the missing or damaged personal possessions described by the tenant.

The tenant and TG provided uncontradicted testimony that all items missing were new or almost new. They explained this was the tenant's first apartment and all purchases were made prior to the tenant moving into the unit to set up a home for him. The exception was for the jewellery (earrings and chains) and his class ring.

The tenant provided a list of missing or destroyed items based on his recollection of what was missing or destroyed:

ITEM	EST. VALUE
Jewellery - Earrings (diamond), chains (2) and school ring	\$1,200.00
Linen – bedding, pillows, towels	\$700.00
Clothing – sweater, shirts, hoodies, jeans	\$500.00
Mirror and dresser	\$400.00
Food	\$250.00
Toiletries	\$100.00
Refrigerator (mini)	\$200.00
Cleaning supplies	\$100.00
Kitchen supplies – cutlery, pots & pans, glassware, utensils, plates	200.00
Garbage can (metal)	\$30.00
<b>TOTAL</b>	<b>\$3,680.00</b>

The tenant seeks a monetary order in this amount of **\$3,680.00**.

### Analysis

Not all the tenant's evidence will be reproduced, and reference will only be made to relevant, admissible submissions and evidence.

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant

bears the burden of proof to provide sufficient evidence to establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a monetary award.

I will consider the first step as set out above and whether the tenant has established the existence of the damage or loss.

Upon viewing the photographs and hearing the testimony of the tenant and his witness, his mother TG, I accept the tenant's uncontradicted evidence and find on a balance of probabilities that he has incurred the damage and loss of which he claims. I find the tenant incurred considerable damage to his personal possessions, furnishings, kitchen supplies and other items as enumerated above.

I will now turn my attention to the second step and whether the damage or loss resulted directly from a violation by the other landlord of the *Act*, regulations, or tenancy agreement.

In return for the payment of rent, the tenant is entitled to possession of the rental unit. Under the *Act*, the landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property, unless the landlord has a court order authorizing the action.

Section 26(3) of the *Act* provides:

- (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*
  - (a) seize any personal property of the tenant, or*
  - (b) prevent or interfere with the tenant's access to the tenant's personal property.*
- (4) Subsection (3) (a) does not apply if*
  - (a) the landlord has a court order authorizing the action, or*

*(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

I accept the tenant's testimony that the landlord put the tenant's personal possessions on the side of the street in front of the unit without the tenant's permission and refused the tenant access to the unit to recover any remaining personal possessions. I accept the tenant's personal possessions which were in the unit were missing, destroyed or damaged because of the landlord's actions.

I find the losses are a direct result of the landlord's actions which are contrary to his obligations under the *Act* and the tenancy agreement. I find the landlord violated the *Act*.

The third step involves the evidence of the actual monetary amount or value of the damage or loss.

The tenant did not provide any evidence of the value of the items missing or destroyed. Given the situation of a young person living in his first apartment, it is unsurprising that the tenant has no receipts. Nevertheless, I find the tenant's estimate of the damage and loss to be reasonable and his testimony credible. Based on the testimony and evidence presented to me, and on a balance of the probabilities, I find that the amount claimed by the tenant is a reasonable estimate of his loss and I accept the estimate as an actual monetary loss.

The fourth step is a requirement that the tenant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*. I find the tenant made all reasonable efforts to enter the unit and salvage anything that remain of his personal property. He called the police for assistance. He and TG testified they returned to the unit several times to ask for entry and to go through whatever the landlord had put on the side of the street. They called the landlord many times with no response.

I find the tenant has done everything reasonable to reduce his losses and minimize the amount claimed.

I therefore find the tenant is entitled to a monetary order for loss or damage in the amount of **\$3,680.00** as set out above.

As I have provided a monetary order to compensate the tenant for his personal possessions unlawfully seized by the landlord, I dismiss the tenant's application for an order requiring the landlord to return the tenant's personal property without leave to reapply.

The tenant claimed reimbursement of rent for September 2018.

Section 1 of the *Act* defines "service or facility" to include utilities and related services. I accept the tenant's evidence that the landlord agreed to provide internet access as part of the tenancy agreement and that this is a "related service". Section 27 provides that a landlord must not terminate or restrict a service or facility and states as follows:

*27 (1) A landlord must not terminate or restrict a service or facility if*  
*(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*  
*(b) providing the service or facility is a material term of the tenancy agreement.*

The tenant states that access to the internet was essential to his use of the rental unit as living accommodation. I accept the tenant's evidence in this regard.

Pursuant to section 65(1) of the *Act*, an arbitrator may order that any money paid by a tenant to a landlord be repaid to the tenant.

Because the landlord denied the tenant the agreed upon internet service for half of the month of September 2018, I find the landlord failed to provide the services as agreed. I accordingly grant the tenant a monetary order in the amount of \$325.00 as reimbursement of one-half a month's rent.

At the hearing, the tenant withdrew the claim for reimbursement of TG's lost wages. I dismiss this aspect of the claim without leave to reapply.

As the tenant was successful in his claim, I grant the tenant reimbursement of his filing fee in the amount of \$100.00.

In summary, I grant the tenant a monetary order of **\$4,105.00** calculated as follows:

ITEM	AMOUNT
Damage and loss (per above table)	\$3,680.00
Reimbursement of rent (1/2 x \$650.00)	\$325.00
Filing fee reimbursement	\$100.00
<b>Total</b>	<b>\$4,105.00</b>

### Conclusion

The tenant is granted a monetary order in the amount of **\$4,105.00**. The landlord is ordered to pay this sum forthwith.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: November 1, 2018

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Residential Tenancy Branch