



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, RPP, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) that were filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking an order for the Landlord to return personal property and compensation for damage or loss under the Act, regulation, or tenancy agreement, the return of a security deposit, and recovery of the filing fee.

The hearing was originally convened by telephone conference call on September 20, 2018, at 1:30 PM and was attended by the Tenant and the Agent for the Landlord, both of whom provided affirmed testimony. The hearing was subsequently adjourned due to time constraints and jurisdictional concerns and an interim decision was made on September 20, 2018. For the sake of brevity I will not repeat here the matters discussed or the findings of fact made in the interim decision and as a result, the interim decision should be read in conjunction with this decision. The reconvened hearing was set for November 5, 2018, at 9:30 AM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) in the manner requested during the original hearing.

The hearing was reconvened by telephone conference call on November 5, 2018, at 9:30 AM and both the Tenant and the Agent P.J. attended on-time and ready to proceed. The Landlord and another agent for the Landlord, R.T., both attended for a brief period later in the hearing. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As stated in the interim decision, neither party raised any concerns at the original hearing regarding the service of the Application, the Amendment or the Notice of Hearing for the original hearing date. At the close of the original hearing I ordered both parties to serve on one another and submit to the Branch copies of any documentary evidence they wished to rely on at the next hearing in relation to whether or not a residential tenancy under the Act existed. The parties both submitted documentary evidence to the Branch for my review in compliance with my orders and agreed that the documents were served on and received by one another in compliance with my orders and the Rules of Procedure. Neither party raised any concerns about the rest of the documentary evidence before me for review in either hearing.

As a result, I have reviewed and accepted all evidence and testimony before for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of this decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

### Preliminary Matters

As stated in the interim decision, I had questions and concerns regarding my jurisdiction to hear and decide this matter at the close of the original hearing. As a result, the matter was adjourned and the parties were ordered to submit documentary evidence in support of their positions regarding whether a residential tenancy under the *Act* existed.

As stated above, the parties both submitted documentary evidence to the Branch for my review in compliance with my orders and agreed that the documents were served on and received by one another in compliance with my orders and the Rules of Procedure. These documents included one page of a tenancy agreement initialed by the Tenant and the agent R.T., a one page letter from the agent R.T., and a blank B&B agreement form.

The Tenancy agreement states that the one year fixed term tenancy began on November 15, 2016, that rent in the amount of \$750.00 is due on the first day of each month and that a security deposit in the amount of \$350.00 is to be paid by the Tenant. The Tenant stated that both he and the agent R.T. initialed this agreement and that although there was originally a second page, he no longer has it. As a result, the Tenant argued that a residential tenancy was in place and the Branch therefore has jurisdiction over this matter.

The Agent argued that the initial of R.T. on the one page tenancy agreement is fraudulent as it does not match the signature of a document authored by him on October 15, 2018, and submitted by the Landlord in preparation for the reconvened hearing. However, the agent R.T. called into the hearing as a witness and provided affirmed testimony that the initial on the first page of the tenancy agreement submitted by the Tenant is his and that there was in fact a tenancy agreement signed by him and the Tenant in the terms described above on or about November 15, 2016. Further to this, all parties were in agreement that a \$350.00 security deposit was paid by the Tenant, that he resided in the same room in the B&B for over one year, that despite being located in a B&B, the room rented to the Tenant was not rented as part of travel accommodation, and that the Tenant did not maintain any other residence.

Based on the above, I found that there was a residential tenancy agreement between the Landlord and the Tenant, which was not excluded from the Branch's jurisdiction under section 4 of the *Act*, beginning November 15, 2016, and continuing until *at least* December of 2017. As a result, I therefore accepted jurisdiction to hear and decide the Tenant's Application and Amendment and the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the Tenant entitled to the return of personal possessions?

Is the Tenant entitled to compensation for damage or loss under the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to the return of his security deposit?

Is the Tenant entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy began on November 15, 2016, that rent in the amount of \$750.00 is due on the first day of each month and that a security deposit in the amount of \$350.00 is to be paid by the Tenant. The parties all agreed that the Tenant paid a \$350.00 security deposit and resided in the room rented to him under the tenancy agreement until sometime in December of 2017, at which time the Tenant disappeared without notice. The parties were also in agreement that in lieu of rent, the Tenant was to complete work for the Landlord.

The Tenant agreed that he was gone for several months between January and March of 2018 but stated he had a rent credit at the time of his absence and therefore the rental unit remained his and that all of his belongings remained in the rental unit during this time. Further to this, the Tenant stated that upon his return in April of 2018, he continued to reside in the same rental unit, under the same tenancy agreement and with all of his possessions until his tenancy was unlawfully ended near the beginning of August when the Landlord revoked his access to the rental unit without proper notice and removed his possessions.

The Agent testified that when the Tenant disappeared without notice, he was considered to have abandoned the rental unit and the room he rented was therefore used as part of the B&B during the months he was away. The Agent stated that when the Tenant returned, he was allowed to reside in the same room out of kindness but that no new tenancy agreement was entered into and the original tenancy agreement was not reinstated. However, the Agent was unable to provide any specific details of what agreement was entered into with the Tenant regarding his reoccupation of the rental unit if it was not in fact a reinstatement of the tenancy, other than to state that it was agreed that the Tenant could work in lieu of payment for the accommodation. The agent R.T. also confirmed in writing and in the hearing that the Tenant, upon his return to the rental unit, was to complete work in lieu of any payment for the accommodation.

The Tenant called the Agent's testimony that he was no longer a Tenant upon his return to the rental unit in April of 2018 into question stating that he was required to pay, through work on the Landlord's property, for the months he was away, which makes no sense if he was not a Tenant, and pointed to the fact that the Landlord did not have him sign a copy of the B&B agreement submitted by the Agent upon his return. As a result, he argued that his original tenancy continued under the same terms and conditions and that he was not in fact a guest of the B&B but rather a Tenant of the property upon his return.

Although the parties disagreed about the validity of the reason for which the Tenant's occupation of the rental unit was ended, there was agreement that in early August of 2018, the Tenant's possessions were removed from the rental unit without notice and the locks were changed giving the Tenant no further access to the rental unit. The Agent and Landlord testified that the Tenant and his possessions were removed from the property with the assistance of the police due to an assault on the Landlord. A written statement from the agent R.T. also stated that the Tenant had assaulted the Landlord resulting in eviction. The Tenant denied the allegations that he had assaulted the Landlord and stated that in any event, the Landlord and Agent were not entitled to end his tenancy in this manner. The Tenant argued that as he had completed enough work to pay the \$750.00 in rent for August of 2018, and was unlawfully evicted at the start of August, he should therefore be entitled to \$750.00 in compensation for August rent.

The Agent denied that the Tenant had paid for August rent through work or that the Tenant was unlawfully evicted. The Agent reiterated that a tenancy was never re-established when the Tenant reoccupied the rental unit in April and testified that the police attended when the Tenant was evicted and his possessions removed and that the police advised him and the Landlord that they were within their rights to end the Tenant's occupation of the rental unit in this manner as he was simply a guest at the B&B.

The parties agreed that the Tenant's \$350.00 security deposit was not returned to him and the Agent testified that the Tenant was not entitled to its return as the Tenant initially abandoned the rental unit in December of 2017, a tenancy was never re-established when the Tenant reoccupied the rental unit in April of 2018, and no forwarding address was provided in writing by the Tenant for its return. Further to this, the Agent stated that the Tenant caused damage to the rental unit and that there was a loss of rent due to the Tenant's abandonment of the unit. While the Tenant disputed that there was damage to the rental unit, or a loss of rent due to abandonment, he provided no documentary evidence or testimony that his forwarding address was provided to the Landlord, in writing, at the end of the tenancy.

In addition to the above, the Tenant also stated that he has yet to receive access to all of his remaining possessions which include but are not limited to coffee and end tables, a hutch, tubs of laundry soap, other unspecified personal possessions, and tools. As a result, he requested an order granting him access to these possessions. Further to this the Tenant stated that other

possessions of his were placed outside by the Landlord and Agent and were either rummaged through or damaged.

The Agent testified that all of the Tenant's possessions have been returned to him or his friends and that the Landlord has retained none of the Tenant's possessions. Further to this the Agent stated that the room rented by the Tenant was furnished and exceptionally small as it is a B&B room. As a result, he stated that the Tenant did not possess many of the items alleged, such as coffee tables and a hutch, as they simply would have not have fit into the rented room. In support of his testimony the Agent pointed to a statement authored by the agent R.T. in which R.T. states that all of the Tenant's personal possessions were returned to him, including a televisions and remote. As a result, the Agent argued that there are no possessions to grant access to.

### Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further to this, rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As this is the Tenant's Application, I therefore find that it is incumbent upon the Tenant to satisfy me, on a balance of probabilities, that he is entitled to the orders and compensation sought.

While the parties disputed whether a tenancy was re-established when the Tenant reoccupied the rental unit in April of 2018, as stated in the preliminary matters section of this decision, I have already found that a tenancy over which the Branch has jurisdiction under the *Act* existed beginning November 15, 2016, and continuing until *at least* December of 2017. The parties agreed that a \$350.00 security deposit was collected by the Landlord at the start of the tenancy and that no amount of this deposit has been returned. Section 38 (1) of the *Act* states that within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, less any deductions permitted under sections 38 (3) or 38 (4) (a) of the *Act*, or make an application for dispute resolution claiming against it. As there is no testimony or documentary evidence before me from the Tenant that he has provided his forwarding address, in writing, to the Landlord, I find that the Tenant's Application seeking the return of the security deposit is premature as the right of the tenant for the return of the security deposit has not yet been triggered under the *Act*. As a result, I dismiss the Tenant's application for the return of the security deposit with leave to reapply and I strongly encourage both parties to review their rights and obligations under the *Act* and the regulation, with regards to start and end of tenancy condition inspections and the return or retention of the security deposit prior to making any subsequent applications to the Branch in relation to the security deposit.

Although the Tenant argued that the Landlord has not returned many of his possessions, the Agents for the Landlord denied this allegation and the Tenant has failed to provide any documentary or other evidence to corroborate his testimony that he either owned the specified possessions he seeks access to or that they were not returned to him at the end of the tenancy. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that he is entitled to an order for the Landlord to return his personal property and I therefore dismiss this claim without leave to reapply.

Although the parties agreed that the Tenant's occupation of the rental unit was ended in early August without notice, the parties disputed whether a tenancy under the *Act* was in effect at that time. Although the Agent argued that a tenancy was not re-established when the Tenant re-occupied the rental unit in April of 2018, after his several month absence, he could provide me with no specific details about what agreement was entered into with the Tenant in relation to his occupancy of the rental unit if it was not a reinstatement of the tenancy. Further to this, although the Agent provided me with a blank copy of the B&B guest agreement form, which he testified was completed for B&B guests; he acknowledged that one was not completed with the Tenant upon his reoccupation of the rental unit in April of 2018. As a result, I have concern regarding the accuracy of the Agent's testimony that the Tenant was in fact a guest of the B&B and not a tenant under the original tenancy agreement.

In contrast, the Tenant testified that it is clear that the tenancy either did not end during his absence or was re-established upon his return as he paid for the months in which he was away, he re-occupied the same suite where all of his personal possessions had remained during his absence, and he continued to pay the same rent established in the tenancy agreement through continued work for the Landlord. Based on the above, I find the Tenant's testimony that a tenancy over which the Branch has jurisdiction existed at the time his occupation of the rental unit was ended in early August of 2018, reliable and compelling when considered in relation to the Agent's unspecific testimony and other undisputed facts and evidence before me. As a result, I am satisfied that a tenancy over which the Branch has jurisdiction existed in August of 2018, and that the Landlord therefore did not have the right under the *Act* to end the tenancy without mutual agreement by the Tenant, or an order from the Branch, or proper notice under the *Act*.

Although I am satisfied that the Landlord unlawfully ended the tenancy in early August of 2018 when they changed the locks to the rental unit and removed the Tenant's possessions without notice or authorization to do so under the *Act*, for the following reasons I am not satisfied that the Tenant is entitled to the \$750.00 sought for August rent. Although the parties agreed that the Tenant was to do work in lieu of rent, they disagreed about the amount of work actually completed by the Tenant and whether he had in fact completed enough work to have paid for August 2018 rent. As stated earlier in this decision, it is incumbent upon the Tenant to satisfy me of his claims. Residential Tenancy Policy Guideline (the "Policy Guideline") # 16 further states that in order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Although I am satisfied that the Landlord breached the *Act* when they unlawfully ended the tenancy; given the lack of supporting documentary or other evidence from the Tenant that rent for August of 2018 was indeed paid and the conflicting affirmed testimony of the parties, I am not satisfied by Tenant, on a balance of probabilities, that he suffered a \$750.00 loss as a result of this breach. As a result, I dismiss the Tenant's claim for \$750.00 in compensation without leave to reapply. Despite the foregoing, and pursuant to Policy Guideline #16 I find that the Tenant is instead entitled to nominal damages in the amount of \$100.00 due to the significant and egregious infraction of his legal right to occupation of the rental unit by the Landlord. Pursuant to section 72 of the *Act*, I also grant the Tenant recovery of the \$100.00 filing fee.

Based on the above, and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$200.00.

### Conclusion

The Tenant's Application seeking an order for the Landlord to return his personal possessions is dismissed **without** leave to reapply.

The Tenant's Application seeking the return of his security deposit is dismissed **with** leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$200.00. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. 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: November 30, 2018

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Residential Tenancy Branch