



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, MNDCT, MNSD

### Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order for the landlord to return the tenant's personal property, pursuant to section 65.

Both parties 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 tenant testified that she served the landlord with her application for dispute resolution via registered mail on October 26, 2018. The landlord testified that she received the tenant's application for dispute resolution on or about November 6, 2018. I find that the landlord was served with the tenant's application in accordance with section 89 of the *Act*.

The shortened version of the landlord's first name was listed on the tenant's application for dispute resolution. In accordance with section 64 of the *Act*, I amended the tenant's application for dispute resolution to state the landlord's full first name.

### Preliminary Issues- Res Judicata

The landlord submitted into evidence a previous decision dated November 05, 2018 between the same parties as this hearing and regarding the same residential address. The November 05, 2018 decision resulted from the landlord's application. The tenant's

application which is the subject of today's hearing was filed too close to the first hearing date to be crossed with the landlord's application. The following findings, pertinent to today's hearing, were made in the November 05, 2018 decision:

- The landlord applied for a monetary order for unpaid rent. The tenant was found to be entitled to receive one month's free rent, pursuant to section 51(1) of the *Act*. The landlord was awarded a monetary order for unpaid rent, taking into account the one month of free rent the tenant was entitled to.
- The landlord made an application for dispute resolution claiming against the tenant's security and pet damage deposits pursuant to section 38 of the *Act*. The landlord was found to be entitled to retain the tenant's entire security deposit in the amount of \$1,150.00 in part satisfaction of her monetary claim against the tenant.

In this application both parties confirmed that both parties remained the same and that this dispute was a result of the same relationship outlined in the November 05, 2018 decision. Neither party has filed for review of the November 05, 2018 decision.

*Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The tenant's application seeks in part to recover from the landlord the following:

<b>Item</b>	<b>Amount</b>
One Month's Rent	\$2,300.00
Security Deposit- Doubled	\$2,300.00
<b>Total</b>	<b>\$4,600.00</b>

I find that the above claims were conclusively decided in the November 05, 2018 decision; therefore, the above claims are *res judicata*, meaning the matters have already been conclusively decided and cannot be decided again.

The tenant's application for one month's rent and doubled security deposit are dismissed without leave to reapply for lack of jurisdiction.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to an Order for the landlord to return the tenant's personal property, pursuant to section 65 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on February 15, 2017 and ended on April 13, 2018. This tenancy was originally a fixed term tenancy set to end on May 15, 2018. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant is seeking the following damages arising out of the above tenancy:

<b>Item</b>	<b>Amount</b>
Slander	\$5,000.00
Tool kit	\$500.00
Cleaning fee	\$135.00
<b>Total</b>	<b>\$4,600.00</b>

Both parties agree that the landlord contacted a local news agency about the condition of the subject rental property. The tenant testified that the local news agency broadcast an inaccurate slanderous tv news segment maligning the tenant. The landlord testified that the news segment was accurate. The tenant is seeking \$5,000.00 for slander.

The tenant testified that the landlord took her tool box from the subject rental property on or around April 13, 2018. The tenant testified that she purchased the tool box for approximately \$500.00 in December of 2017. The tenant testified that she did not enter a receipt for same into evidence. The landlord denied taking the tenant's tool box. Text messages between the landlord and tenant regarding the tool box were entered into

evidence. The text messages show the tenant requested the return of the tool box and the landlord denying taking it. The tenant is seeking the value of the tool box in the amount of \$500.00.

The tenant testified that she secured a cleaner to clean the subject rental property after she moved out and paid the cleaner a down payment of \$135.00. The tenant testified that the landlord changed the locks and so her cleaner was not able to clean the subject rental property and she lost the \$135.00 deposit. The tenant entered into evidence an undated letter from her cleaner stating that the cleaner was contacted by the tenant on April 13, 2018 and told not to complete the scheduled move out clean because the tenant was locked out of the subject rental property. The undated letter was not entered into evidence in the previous hearing.

The landlord testified that the tenant's cleaner is a friend of the tenant and was listed on the tenant's rental application as a reference. The application stated that the cleaner was a friend and someone who watched the tenant's daughter. The tenant testified that she had a professional relationship with her cleaner.

### Analysis

The tenant's application seeks compensation for slander. The Residential Tenancy Branch does not have the jurisdiction to consider claims arising from slander. I therefore dismiss without leave to reapply the tenant's claim for damages arising out of slander in the amount of \$5,000.00.

The testimony of the parties in regard to the tool box is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant has not met the required burden of proof to establish that the landlord took her tool box. I therefore find that the tenant's claim for \$500.00 for the tool box is dismissed without leave to reapply.

In the November 05, 2018 decision I found that the tenant failed to prove, on a balance of probabilities, that the landlord changed the locks on April 13, 2018, thereby denying her access. No testimony or evidence I have seen and or heard in today's hearing has

altered my above finding. As I have found that the tenant did not prove that the landlord locked her out, I find that she cannot collect the \$135.00 deposit she claims she paid to the cleaner as she has not proved that it was the landlord's actions which caused her loss.

### Conclusion

The tenant's 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: February 26, 2019

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Residential Tenancy Branch