



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDCT, MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 9, 2018 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed and return of double the security deposit.

This matter came before me November 02, 2018, March 01, 2019, April 11, 2019 and July 15, 2019. Interim Decisions were issued in relation to these hearings. This decision should be read with the Interim Decisions.

At the September 23, 2019 hearing, the Tenant called in with J.H. to assist. The Landlord and Legal Counsel did not attend the hearing. I proceeded in their absence as RTB records show the Interim Decision from July 15, 2019 and new Notice of Hearing were sent to the parties July 18, 2019.

I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

At the July 15, 2019 hearing, it was determined that the Tenant would submit further evidence to me and send this to Legal Counsel for the Landlord within one week of the hearing. At the September 23, 2019 hearing, the Tenant confirmed she submitted the evidence to me and emailed it to Legal Counsel for the Landlord as required.

During the September 23, 2019 hearing, witness C.M. called into the conference after the Tenant had started her final submissions. At the time, it was my recollection that the parties were done with their evidence. I told the Tenant this and said I would look at the applicable Interim Decision. While I was looking for my Interim Decision, C.M. said she had to go and hung up. This was approximately five minutes after she called into the hearing. I was unable to locate the applicable Interim Decision at that time. I proceeded with the hearing. At the end of the hearing, I asked the Tenant if she wanted me to find the applicable Interim Decision and have C.M. call into the hearing again. The Tenant said this was not necessary. I subsequently located the applicable Interim Decision which specifically stated that "C.M. must be present at the outset of the hearing if the Tenant wishes to call her as a witness". C.M. was not present at the outset of the hearing. I did not hear from witness C.M.

As explained in the Interim Decisions, the only issue I will address is the request for compensation for damaged and missing belongings.

During the hearings, the parties and Legal Counsel were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties, all submissions and all documentary evidence. I have only referred to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Tenant entitled to compensation for damaged and missing belongings?

### Background and Evidence

The Tenant sought the following compensation:

Item	Description	Amount
1	Dirt Bike 1	\$1,899.00
2	Dirt Bike 2	\$494.17
3	Home Depot	\$2,018.79
4	Kal Tire	\$1,364.34
5	Michael Hill	\$449.00
6	PARIS	\$2,147.04
7	PlayStation 4	\$379.99
8	The Brick estimates	\$11,776.61
9	HP Pavilion PC	\$899.96
10	Printer	\$149.93
11	Tablet	\$300.00
12	13-inch laptop	\$919.00
13	17-inch laptop	\$899.00
14	Winners clothing/furniture	\$1,758.87
15	Video camera	\$1,563.36
16	Pool x 2	\$1,299.98
17	PlayStation 3	\$147.99
18	Cassette player	\$265.94
	<b>TOTAL</b>	<b>\$28,732.97</b>

A written tenancy agreement was submitted as evidence. It is between the Landlord, Tenant and a co-tenant in relation to the rental unit. The tenancy started December 01, 2016 and was a month-to-month tenancy. The agreement shows rent was \$1,100.00 per month due on the first day of each month. The agreement is signed by the Landlord and Tenant.

The Landlord testified that the written agreement is accurate. The Tenant testified that the written agreement is accurate except for the rent amount. She testified that the agreement was that rent would be \$950.00 and then \$1,000.00 but never \$1,100.00.

There is no issue that the Landlord changed the locks to the rental unit December 04, 2017 as the parties agreed on this.

The Tenant's claim relates to belongings she says were in the rental unit when the Landlord changed the locks. The Tenant's position is that the Landlord changed the locks without authority. She says she tried to get her belongings back in the months following. The Tenant's position is that the Landlord only returned some of her belongings and none of her more valuable belongings.

The Landlord's position is that the Tenant abandoned the rental unit seven to ten days prior to December 04, 2017. The Landlord also raised an issue about finding marijuana plants in the rental unit and changing the locks to secure the rental unit. The Landlord suggested that others took the Tenant's belongings. The Landlord disputed that the items claimed for were in the rental unit when the locks were changed.

### ***Tenant Evidence***

The Tenant testified as follows. She did not abandon the rental unit or her belongings. She left town for a few days at the end of November due to an issue with her son. She returned to the rental unit December 04, 2017 to pay rent and found the locks changed. She called the Landlord who indicated the tenancy was over and swore at her. She attempted to get her belongings back four times after this. She filed for dispute resolution to get her belongings back in February. The Landlord sent her a letter about getting her belongings back and paying him \$1,000.00. At that point, the parties had a dispute resolution hearing scheduled. She thought it best to leave the issue until the hearing and told the Landlord this. At the hearing, it was determined she could get her belongings back.

The Tenant further testified as follows. She had her sister, daughter and brother-in-law pick up her belongings from the Landlord. The belongings were supposed to be stored in one place but were stored in two. When her belongings were retrieved, many of them were missing. She did not get anything of value back from the Landlord.

The Tenant submitted as follows. The Landlord was required to keep her belongings safe when he changed the locks. The Landlord did not follow the requirements relating to abandonment in relation to her belongings. The Landlord did not make a list of her items, did not have a bailiff move her belongings and did not keep items worth over \$500.00.

The Tenant testified that the Landlord took photos of her belongings in the rental unit after he changed the locks. The Tenant referred to these to show what items were in the rental unit when the locks were changed.

The Tenant testified as follows in relation to the specific items claimed for.

Dirt Bike 1 & 2 (Item #1 and #2)

The Tenant testified that she had dirt bikes in the storage space at the back of the rental unit. Neither were returned to her.

Home Depot (Item #3)

The Tenant testified that she had the items listed in the Home Depot order submitted but did not get these back from the Landlord.

In relation to the BBQ, the Tenant testified as follows. She had a BBQ that was not returned to her. This is shown in the Landlord's photos submitted. It was brand new the summer prior. It was stainless steel.

Based on the Landlord's photos submitted, Legal Counsel suggested to the Tenant that the BBQ in the photos was black and not stainless steel. The Tenant denied this.

Legal Counsel suggested that the Tenant could have attended the rental unit and taken the BBQ even after the locks were changed given it was outside. The Tenant testified that the police advised her not to do so. The Tenant also testified that she would have been compromising her safety given prior issues with the Landlord.

The Tenant testified that she had a fire pit and trimmer which is shown in the Landlord's photos.

Kal Tire (Item #4)

The Tenant testified that she had four tires on rims in the storage shed that the Landlord locked.

Michael Hill (Item #5)

The Tenant testified that she had diamond earrings that went missing. She relied on the evidence of witnesses submitted to support her testimony about what jewelry she had in the rental unit.

Paris (Item #6)

The Tenant relied on the evidence of witness T.I. in relation to jewelry she had during the tenancy.

PlayStations (Item #7 and #17)

The Tenant testified that she had two PlayStations. She testified that these were not returned. She relied on the evidence of witness T.I. in relation to this.

Brick (Item #8)

The Tenant testified as follows. The amount sought for items from the Brick is the cost of replacing her furniture. Her bedroom suite was returned damaged. Her bed was not returned. Bedding was missing. Her sofa was returned with rat feces and mold on it.

The Tenant referred to evidence submitted showing her couch was left on the patio from December 04, 2017 to May 08, 2018.

HP Pavilion PC (Item #9)

The Tenant testified that she received her keyboard and mouse back but not the computer tower. The Tenant testified that she had to re-purchase software for the computer.

Printer (Item #10)

The Tenant testified that her printer was broken when returned. She also testified that there was ink in the printer previously.

Tablet (Item #11)

The Tenant testified that she had a couple of tablets. She referred to the evidence of witnesses T.I. and D.I. in this regard.

13-inch laptop (Item #12)

The Tenant testified that T.I. purchased a laptop for D.I. and it was not returned by the Landlord. She referred to the evidence of witnesses T.I. and D.I. in this regard.

17-inch laptop (Item #13)

The Tenant testified that T.I. purchased a laptop for D.I. and it was not returned by the Landlord.

Winners (Item #14)

The Tenant testified that none of the clothes in the rental unit were returned by the Landlord. She said she had more than \$1,758.87 worth of clothes.

Video camera and cassette player (Item #15 and #18)

The Tenant testified that she had a video camera that was not returned. She also testified that she has to purchase a cassette player in order to play her video tapes.

Pool x 2 (Item #16)

The Tenant testified that she had two pools which were not returned to her.

Legal Counsel questioned the Tenant extensively. I find the following testimony from this questioning relevant. Her position is that the Landlord stole her belongings. The Landlord changed the locks to the rental unit which made it impossible for her to pack up her belongings and remove them from the rental unit. She tried to arrange to get her belongings back in December. The Landlord told her she could come get them but only if she was alone. She would not go to the rental unit alone with the Landlord present given issues during the tenancy. It is not true that the Landlord gave her two dates to come get her belongings and she did not show up. She let the Landlord know she could not make the dates provided. She had a new place December 15, 2017 that she could have moved her belongings into, but the Landlord was upset about this because it was right before Christmas. She did not attend the rental unit to get her belongings from the shed because the key to the shed had been locked in the rental unit.

Legal Counsel suggested to the Tenant that she left the rental unit in November because of an incident involving her son that was reported in the media. The Tenant denied that she vacated or abandoned the rental unit given this incident. She testified that she was still going in and out of the rental unit. She denied that the rental unit was left unlocked for 10 days as suggested by Legal Counsel. She testified that she had people watching the rental unit. She testified that there was only one day when the rental unit was not locked during this time. She testified that she had not paid December rent as of December 04, 2017 because the Landlord allowed her to pay rent in two deposits and rent was not due on the first.

The Landlord submitted new photos for the July 15, 2019 hearing. These had been taken from April to June. In relation to these, the Tenant pointed out that the Landlord is only now finding some of her belongings. The Tenant agreed that tires shown in the new photos are possibly hers. Based on the new photos, Legal Counsel put to the Tenant that she was seeking new rims for her tires when she did not have rims. The Tenant did not seem to understand the difference and said she is seeking the cost of new tires and whatever they come on.

The Tenant called A.H., her daughter, as a witness who testified as follows. She checked on the rental unit while the Tenant was away at the end of November. She did not have a key so left the door unlocked. She did not leave any doors or windows physically open. She drove past the rental unit two to three times per day.

Witness A.H. further testified as follows. The last time she entered the rental unit prior to December 04, 2017, everything the Tenant owned was still there. She did not go searching for things in the rental unit but there was nothing obvious missing.

Witness A.H. further testified as follows. She was present when the Tenant spoke to the Landlord over the phone December 04, 2017 and heard the conversation. The Landlord told the Tenant she was not welcome back to the rental unit. The Tenant asked the Landlord how she could get her belongings and the Landlord told her it was not his problem and swore at her. She had a couple of conversations with the Landlord about getting the Tenant's belongings back. The Landlord told her he would not allow her and her brother to enter the rental unit.

Witness A.H. further testified as follows. The Tenant had a stainless-steel BBQ, gas fire pit and two pools. Less than a quarter of the Tenant's belongings were returned by the Landlord. None of the Tenant's larger belongings were returned. Only one bed was returned. She assumes the Tenant did not get her computer tower back because the Tenant lives with her and does not have a computer. The Tenant did not get her computer screen back.

During the hearing, the Tenant had her daughter look at the list of items claimed. A.H. testified that the Tenant had the items claimed.

Witness A.H. testified as follows in relation to questions from Legal Counsel. Someone was at the rental unit three times per day while the Tenant was gone at the end of November. Either she, her husband or her aunt went to the rental unit. The Tenant was only gone four to six days in relation to the incident at the end of November. She did not do an inventory of items in the rental unit when she was there but she looked in each room and nothing raised any flags that someone had been in the rental unit.

Witness A.H. further testified as follows. She spoke to the Landlord about picking up the Tenant's belongings. The Landlord wanted her to pick them up but she said it was impossible to get a truck at that point because it was Christmas time.

Legal Counsel questioned witness A.H. about a letter she sent to the Tenant's new landlord purporting to be her landlord. A.H. denied that this was misleading because her mother had stayed at her house numerous times and had stayed before finding a hotel. She testified that the Tenant paid her to stay at her house.

The Tenant made the following final submissions. She could not access receipts for her belongings because the Landlord changed the locks to the rental unit. The Landlord submitted no evidence that the dead marijuana plants in the rental unit nullified his insurance. The Landlord cannot prove she abandoned her belongings. There was not a continuous month that went by during which she did not try to get her belongings back. All of her belongings were fairly new.

The Tenant relied on sections 26, 27 and 31 of the *Act* and section 30 of the *Residential Tenancy Regulation* to support her position.

I find the following evidence submitted by the Tenant relevant to the matters before me:

- Photos of the rental unit taken by the Landlord
- A photo summary outlining what items are in which photo
- Quotes and receipts showing the cost of replacing the items claimed for
- Letter from the Tenant to the Landlord dated March 26, 2018
- A written note stating "Locks have been changed call...to gain entry"
- An email from M.H. titled "witness statement"
- A typed page dated October 15, 2018 from N.S.S. labelled "witness statement"
- Text messages from the rental unit neighbour S.R.
- An email from T.I. labelled "email statement"
- An email from D.P. labelled "witness statement"
- An email from D.I. labelled "witness statement"
- A list showing the age of the items claimed for

### ***Landlord Evidence***

The Landlord testified as follows. In November of 2017, the Tenant was being evicted for failure to pay rent. The rental unit neighbour told him the back door of the rental unit was open and the front door was unlocked for at least 10 days. The neighbour told him the Tenant had left due to harassment arising out of an incident with her son.

The Landlord further testified as follows. He went to the rental unit to look around and take photos. He was not sure what to make of the situation. He observed the back door open. He entered the rental unit and took photos. The rental unit was a mess. He was not sure if it had been abandoned or left that way.

The Landlord further testified as follows. He went back to the rental unit the following day. Furniture was gone including the kitchen table and chairs, a coffee table and a queen mattress. He figured the Tenant was moving out. He found marijuana plants in the rental unit. He phoned his insurance company who said his insurance would not cover the rental unit because of the marijuana plants. He then called the police who said they would come and get the marijuana plants. Four to six days after first entering the rental unit, he changed the locks to the rental unit. He left a note saying that the locks had been changed but that the Tenant could contact him if she wanted her belongings.

The Landlord further testified as follows. The Tenant did not try to pay him December rent. The Tenant did contact him in December after he changed the locks. She wanted her belongings back. He asked her why he should give them to her. They agreed on a date. The Tenant never attended on the agreed upon date and never explained why she did not attend. They



then discussed another date. The Tenant again did not show up. The Tenant did not contact him about getting her belongings back between January and February. D.I. tried to arrange access to the rental unit. He wanted the Tenant or an adult to attend because of past encounters with D.I. Further, him and D.I. could not work out a time.

The Landlord further testified as follows. He did not remove anything from the rental unit until February. Once he received an Order of Possession for the rental unit, he boxed and bagged the belongings in it. He stored the majority of the items in a heated garage. The couch was “disgusting” and left on the deck which has a fibreglass roof. There was a patio set on the deck, a few potted plants and “odds and ends”. He made a list of the items he moved and stored and gave this to the Tenant’s sister. The Tenant’s sister and her husband picked up the belongings and took most of the items. Some items were still in another location.

In relation to the specific items claimed for, the Landlord testified that he never saw a stainless-steel BBQ at the rental unit. The Landlord denied there were dirt bikes stored at the rental unit as claimed. He testified that he never saw dirt bikes and there was no cavity in the storage area where they would have been.

In relation to the new photos he submitted, the Landlord testified that he did not have access to the shed where some of the items in the photos were found until the rental unit neighbours moved out which was around May.

Legal Counsel made the following submissions. The Landlord’s position is that the Tenant abandoned the rental unit. The Landlord attended to check on the rental unit and changed the locks to secure the place. The rental unit was not secure, someone else could have taken the Tenant’s belongings. The Landlord tried to liaise with the Tenant and give her time to get her belongings back; however, the Tenant did not take these opportunities. The Landlord packed up all of the Tenant’s possessions and took them to his mother’s heated garage. The Landlord acted reasonably to preserve the Tenant’s possessions. The Landlord stored the Tenant’s belongings from January to May. There was an agreement about pick up of these belongings in May. The Tenant’s sister came to collect the belongings. The Landlord disputes the Tenant’s testimony about what belongings she had in the rental unit.

I find the following evidence submitted by the Landlord relevant to the matters before me:

- Photos taken in April, May and June
- A prior RTB decision dated January 23, 2018 issuing the Landlord an Order of Possession for the rental unit
- A prior RTB decision dated April 25, 2018 where the parties came to a settlement agreement about the Landlord returning the Tenant’s belongings
- A letter from the Landlord to the Tenant dated March 17, 2018 asking that she arrange to pick up her belongings by April 07, 2018. It states that “a mutual day and time is

necessary and \$1000 to cover handling and storage.” It states, “If you require RTB documentation, we will add that cost plus all back rent for our troubles.”

- Photos of marijuana plants
- Some of the photos submitted by the Tenant as the photos taken by the Landlord
- Text messages between the Landlord and A.H. including text messages about obtaining the Tenant's belongings
- Text messages between the Landlord and D.I. including text messages about obtaining the Tenant's belongings

## Analysis

### **Compensation**

Section 7(1) of the *Act* states that a landlord who does not comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulations*”) or the tenancy agreement must compensate the tenant for damage or loss that results.

Section 7(2) of the *Act* states that a tenant who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* states:

...if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 outlines the test to be applied in compensation claims and states:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

### **Onus of proof**

Pursuant to rule 6.6. of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. [emphasis added]

### **Changing locks / Breach**

There is no issue that the Landlord changed the locks to the rental unit December 04, 2017 as the parties agreed on this.

I find the Landlord changed the locks without notice to the Tenant given the testimony and evidence of both parties. I did not understand the Landlord to state otherwise.

The Tenant submitted that the Landlord changed the locks without authority.

The Landlord submitted, on his own or through Legal Counsel, that he changed the locks for the following reasons. The Tenant abandoned the rental unit. He found marijuana plants in the rental unit which voided his insurance. He changed the locks to secure the rental unit.

There are several sections of the *Act* that address changing locks to a rental unit. These include the following:

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property...

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

A landlord cannot change the locks to a rental unit during a tenancy unless the landlord has some authority under the *Act*, *Regulations* or tenancy agreement to do so.

The Landlord submitted that the Tenant abandoned the rental unit. Abandonment is addressed in section 44 of the *Act* and Part 5 of the *Regulations*.

Section 44 of the *Act* states that a tenancy ends if a tenant vacates or abandons a rental unit.

Part 5 of the *Regulations* sets out the obligations of a landlord when a tenant abandons their personal property in a rental unit and states in part:

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part...

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe...

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

I do not find that the Tenant abandoned the rental unit prior to December 04, 2017.

The Landlord did not provide evidence from the rental unit neighbour for the hearing. I therefore do not rely on what the rental unit neighbour said, as told by the Landlord, as evidence that the Tenant had vacated the rental unit or left a door physically open leading up to December 04, 2017.

The Landlord testified that he attended the rental unit and found the doors physically open. I do not accept this in the absence of further evidence to support the Landlord's testimony. The Landlord testified that he attended the rental unit that day and took photos of the rental unit. I find it unlikely that the Landlord would not have obtained evidence that the doors of the rental unit were left physically open in the circumstances.

Further, I accept the testimony of A.H. that she checked on the rental unit while the Tenant was away at the end of November. I acknowledge that A.H. is the Tenant's daughter and therefore may have some interest in the outcome of this matter. I also acknowledge that there is some evidence before me that A.H. has been willing to exaggerate in the past in order to assist the Tenant. However, that was in relation to a different issue than the one before me and was not affirmed testimony provided in a legal proceeding. I have considered the affirmed testimony of A.H. in this matter and find it reliable and credible on the broader points.

I find it unlikely that the doors of the rental unit were physically open when A.H. was checking on the rental unit while the Tenant was away.

I do accept that the doors to the rental unit were unlocked as I found A.H.'s testimony about this reliable and credible. I do not accept that this points to abandonment as it is not unusual for people to leave their doors unlocked.

The Landlord testified that he entered the rental unit and took photos. These photos are in evidence. I find the photos support the testimony of A.H. and the Tenant that the Tenant was still living at the rental unit and had simply gone away for a few days at the end of November. The photos show the following. The rental unit was full of belongings. The belongings included what a reasonable person would expect to find in a rental unit that is occupied. There was no

sign of abandonment. This was not a situation where only odds and ends or less valuable items were left behind in the rental unit. I do not accept that a reasonable person would view the rental unit in the state it was in and conclude that the Tenant had vacated or abandoned the rental unit. I note that, based on the Landlord's testimony, this was only four to six days before he changed the locks.

The Landlord testified that he returned to the rental unit the following day and found furniture missing. I do not accept that this occurred. Again, I would expect the Landlord to have obtained further evidence of this given he took photos of the rental unit the day prior and, according to his testimony, took photos of marijuana plants in the rental unit that day. The Landlord has not submitted sufficient evidence to support his testimony that furniture was missing from the rental unit the second day he attended.

I understood the Landlord and Legal Counsel to suggest that an unknown third party could have entered the rental unit and removed the Tenant's belongings. I find this unlikely. I have accepted the testimony of A.H. that she was checking on the rental unit while the Tenant was away. I accept the testimony of the Tenant and A.H. that the Tenant was only gone for a short period of time. I accept the testimony of A.H. that she did not notice anything missing from the rental unit while checking on it. I find it likely that A.H. would have noticed if furniture was missing from the rental unit. I also find it unlikely that an unknown third party would enter the rental unit and take a kitchen table and chairs, coffee table and mattress given the size, nature and limited value of these items. In the absence of further evidence to support the suggestion that an unknown third party entered the rental unit and took random items of furniture, I do not accept that this occurred.

I do not accept that the Tenant abandoned the rental unit for the further reason that the Landlord's own testimony does not support the position taken at the hearing that he thought the Tenant abandoned the rental unit. The Landlord testified that he did not know what to make of the situation and was not sure if the rental unit had been abandoned when he first entered the rental unit. He did not state that he thought it was abandoned or provide an explanation for why or how he came to this conclusion. Further, the Landlord testified that he attended the rental unit the following day and thought the Tenant was moving out because furniture was gone. As stated, I do not accept that this occurred. However, the point is that the Landlord's own testimony does not accord with his later position that he thought the Tenant had abandoned the rental unit seven to ten days prior to changing the locks.

As well, I do not find that sufficient time passed to conclude the Tenant abandoned the rental unit. The Landlord testified that he changed the locks four to six days after first attending the rental unit. This is a short period of time. It is not a sufficient amount of time to conclude that the rental unit had been abandoned.

In all of the circumstances, I do not find that the Tenant abandoned the rental unit prior to December 04, 2017. Nor am I satisfied it was reasonable for the Landlord to believe this, if he in fact did.

I accept the testimony of the Landlord that there were marijuana plants in the rental unit. This is supported by other evidence submitted. I do not accept that this voided the Landlord's insurance as the Landlord did not submit evidence to support his testimony on this point. The Landlord would have his insurance policy in writing or, at least, be able to obtain his insurance policy in writing and therefore this could have been submitted.

Regardless of the insurance issue, I do not accept that the Landlord was entitled to change the locks to the rental unit to secure it while the tenancy was ongoing. Neither the Landlord nor Legal Counsel pointed to a section of the *Act, Regulations* or tenancy agreement that provided the Landlord this authority. If the Landlord thought his property was at risk, the option open to him was to obtain an order from the RTB authorizing him to change the locks or end the tenancy. It was not open to the Landlord to change the locks without notice to the Tenant.

I also note that the Landlord never explained why he needed to change the locks to secure the rental unit rather than use an existing key to lock the rental unit so that the Tenant could still gain access upon her return.

In the circumstances, I do not accept that the Tenant vacated or abandoned the rental unit. The tenancy was ongoing. The Landlord had no authority under the *Act, Regulations* or tenancy agreement to change the locks to the rental unit. The Landlord breached the *Act* by changing the locks to the rental unit without notice to the Tenant. As stated, I accept that the Tenant's belongings were in the rental unit. The Landlord locked the Tenant out of her home and blocked access to the Tenant's belongings. This was an egregious breach of the *Act*.

It is not clear to me whether the Landlord's position is that the Tenant abandoned her belongings between December and May. In any event, I do not accept that the Tenant did. There is no issue that the Tenant and her family contacted the Landlord about return of the Tenant's belongings in December as the parties agreed on this and the Landlord submitted evidence of this. The Tenant filed an amendment to an application for dispute resolution on January 03, 2018 on File Number 1 which refers to the Landlord refusing to return her property. The Tenant filed an application for dispute resolution February 14, 2018 for return of her personal property on File Number 2. The hearing on April 25, 2018 related to this matter. It was at this hearing that the parties came to a settlement agreement about return of the Tenant's belongings. I find the Tenant or her family took steps to obtain the Tenant's belongings in December, January and February. I find the Tenant was entitled to wait until the hearing in April to settle this issue.

Further, I do not find the abandonment provisions in Part 5 of the *Regulations* relevant to the period between December and May. The Landlord's position is that he packed up the Tenant's



belongings and stored them until May. He did not take the position that he disposed of some of the Tenant's belongings in accordance with Part 5 of the *Regulations*.

I also note that the Landlord did not comply with Part 5 of the *Regulations*. He did not store all of the Tenant's belongings. He acknowledged that he left her couch on the patio. The Landlord submitted evidence showing he was just finding some of the Tenant's belongings more than a year after he changed the locks. Further, I do not accept that the Landlord created a written inventory of the Tenant's belongings. The Landlord testified that he did. However, he did not submit this written inventory or provide other evidence to support his testimony on this point. I would expect the Landlord to have submitted the written inventory if he in fact created it as required by the *Regulations* given the importance of such a document to this proceeding.

In conclusion, I find the Landlord breached the *Act* by changing the locks to the rental unit without authority. I find the Landlord was responsible for taking care of the Tenant's belongings and ensuring their return when he changed the locks and blocked the Tenant's access to them.

### ***Loss or damage***

I am satisfied the Tenant did not receive all of her belongings back from the Landlord. I am also satisfied the Tenant's couch was damaged upon return.

I am satisfied the Landlord did not take care of the Tenant's belongings and ensure their return as required. He left the Tenant's couch on the patio. I do not accept that the couch was unusable as the photos of the rental unit show it was being used. The Landlord did not submit evidence to support his testimony that the couch was "disgusting". This would have been simple evidence for the Landlord to obtain given he took photos of the rental unit. Further, the Landlord submitted photos taken in April to June of this year showing tires belonging to the Tenant. The tires should have been packed up with the Tenant's belongings and returned to her in May of 2018.

As decided above, I find the photos of the rental unit taken by the Landlord and submitted by the Tenant show the state of the rental unit when the locks were changed December 04, 2017.

I accept that the Tenant had a BBQ, gas fire pit and two pools. This is supported by the testimony of A.H. I found A.H.'s testimony on this point reliable and credible. This is also somewhat supported by the photos.

I also accept that the Tenant had the larger furniture items and common household items claimed for. Her testimony on this point was supported by the testimony of A.H. I accept that A.H. would have been aware of the larger furniture items in the rental unit as I accept that she was checking on the rental unit while the Tenant was away. I also find the photos support the Tenant's testimony in relation to the larger furniture items and common household items.

Based on the evidence noted above, I am satisfied the Tenant had the following belongings in the rental unit when the locks were changed:

- Kitchen table and chairs
- Clothing
- Bed
- Bedding
- Cabinet
- Mirror
- Two pools
- BBQ
- Sectional couch
- Coffee table
- Fire pit
- Trimmer
- Desks

I am satisfied the Tenant did not get the above items back. I did not understand the Landlord to take the position that she did. I understood the Landlord to take the position that these items were not in the rental unit when the locks were changed. I have addressed this above. In relation to the couch, I accept that it was damaged as there is no issue it was stored outside on a patio.

I also accept that the Landlord did not return tires to the Tenant as the Landlord submitted photos of these still on his property. I do not find it appropriate to deal with the return of these at this point. The Landlord should have returned them in 2018. The Tenant is entitled to compensation for the tires as they are not in her possession.

I am not satisfied in the absence of further evidence that the Tenant had the smaller items claimed for such as the jewelry and electronics. The photos do not show these items. I am not satisfied A.H. would have been aware of these items in the rental unit in the absence of further evidence on this point. I do not place any weight on the "witness statements" submitted as none of them are signed by the stated authors. I do not find the emails and unsigned witness statements sufficient to support the claim.

In the absence of further evidence, I am not satisfied the Tenant had the following belongings in the rental unit when the locks were changed:

- Dirt bikes
- The jewelry claimed for
- PlayStations
- Computers
- Printer

- Laptops
- Phones
- Video camera

In relation to the printer, the Tenant testified that this was returned damaged. The Tenant submitted no evidence to support her testimony on this point. This would have been simple evidence to obtain and provide.

### ***Amount or value of the loss or damage***

The Tenant has claimed approximately \$14,500.00 for the items I accept were lost or damaged. I am not satisfied based on the evidence provided that the Tenant is entitled to this amount.

The Tenant has claimed for the cost of new items. Based on the photos and list of the age of the items provided by the Tenant, I am not satisfied the items lost or damaged were new. The Tenant is not entitled to the cost of new items in the circumstances.

Further, the Tenant has submitted quotes for items that are not of a comparable value to the items lost or damaged as shown in the photos. Some examples include the following. The photos show the Tenant's coffee table was older and a basic coffee table. The Tenant submitted a quote for a "lift-top" coffee table on sale for \$262.48. The coffee tables are not comparable. The photos show the Tenant had a kitchen table and four chairs. The Tenant submitted a quote for a seven-piece pub-height dining package on sale for \$1,195.48. The tables and chairs are not comparable. The photos do not show desks; however, I have accepted based on the other evidence that the Tenant had desks. However, the Tenant is seeking compensation for desks worth \$599.98 and \$278.00. I do not find the quotes submitted reasonable.

I am not satisfied based on the evidence that the quotes provided are reasonable or are for items of comparable value to the items lost or damaged. I am left to determine a reasonable amount of compensation. Based on the evidence and my findings above, I can only be satisfied that a reasonable amount is less than half of what the Tenant is seeking. I find this given the age of the items claimed for and the comparable value of the items as gleaned from the photos. I find the Tenant is entitled to \$5,000.00 for the lost or damaged items.

### ***Mitigation***

I am satisfied the Tenant mitigated her loss by contacting the Landlord about getting her belongings back and filing for dispute resolution in this regard. I also find mitigation relevant to the cost of the items claimed which I have addressed above.

### ***Summary***

I am satisfied the Landlord breached the *Act* by changing the locks to the rental unit without authority. The Landlord was required to take care of the Tenant's belongings and ensure they were returned when he took control of the rental unit and her possessions. I am satisfied the Landlord did not do so and therefore some of the Tenant's belongings went missing or were damaged. I am satisfied the Tenant is entitled to some compensation for this loss or damage. I am not satisfied the Tenant is entitled to the amount sought given the evidence submitted. I am satisfied the Tenant is entitled to \$5,000.00 for the loss or damage. The Tenant is issued a monetary order in this amount pursuant to section 67 of the *Act*.

### Conclusion

The Tenant is entitled to monetary compensation in the amount of \$5,000.00. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: October 23, 2019

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Residential Tenancy Branch