



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      RPP

### **Introduction**

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

- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed, I find that these documents were duly served in accordance with section 88 of the *Act*.

The landlord's evidentiary materials references an application filed by the landlord that is set for future hearing. Although all the testimony and evidence submitted for today's hearing would be considered, the landlord was informed that the hearing would only proceed in relation to the tenant's application for the return of her personal property.

### **Issue(s) to be Decided**

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property pursuant to section 65?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on February 1, 2019 with monthly rent set at \$950.00, payable on the first of every month.

A hearing was held on November 15, 2019 to deal with the landlord's application for an Order of Possession as well as a Monetary Order for unpaid rent. The landlord was granted an Order of Possession as well as Monetary Order for unpaid rent on November 18, 2019 in the amount of \$2,100.00.

The tenant testified that the landlord had posted the documents on her door on November 19, 2019. When the tenant returned on November 20, 2019 after work around 5:00 p.m. she had discovered that the landlord had changed the locks, and she no longer had access to any of her belongings still inside the suite. The tenant was able to retrieve her cats. The tenant testified that she then made several attempts to attend at the residence to retrieve her personal belongings, but was unsuccessful each time. The tenant testified that the landlord would not return her personal belongings unless she had agreed to sign a document, which she had refused. The tenant testified that the landlord would release her belongings on the condition that she paid him the \$2,100.00 owed to him, which she had attempted to do. The tenant testified that the landlord would only agree to a certified cheque, which she had then obtained. The landlord then requested documentation about her movers and their business licenses. The tenant testified that each time she was unable to obtain her personal belongings, and that she had to pay the costs of cancelling the movers.

The landlord confirmed in the hearing that he was still in possession of the tenant's belongings and would return them to her on the condition that she complied with her agreement to pay him the \$2,100.00. The tenant testified that she had agreed to pay him the \$2,100.00 in order to retrieve her personal belongings on the dates she had attended, but the landlord failed to fulfill the agreement by releasing her belongings. The tenant testified that the agreement is no longer valid, and that she is not consenting to pay the landlord the \$2,100.00 in exchange for her personal belongings.

### **Analysis**

During the hearing the landlord did not dispute the fact that he was in possession of the tenant's property. Although it was undisputed by the tenant that she had agreed to pay the landlord \$2,100.00 in order to retrieve her personal belongings, I find that she had agreed under duress. I, therefore, do not find this agreement to be binding or valid.

Although the landlord is in possession of a monetary order for \$2,100.00, I find that the landlord does not have an order to maintain possession of the tenant's property. As stated in the previous decision dated November 18, 2019, the monetary order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 65(1)(e) of the *Act*, I find that the tenant is entitled to the return of all of her personal property and belongings. I order that the landlord comply with this order as soon as possible, and without any conditions imposed by the landlord.

### **Conclusion**

I order the landlord to return the tenant's personal property to the tenant as soon as possible.

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: December 20, 2019

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Residential Tenancy Branch