



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, RPP, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act in the amount of \$506.83; and an order for the Landlord to return the Tenant's personal property; and a monetary order for the return of double the security and pet damage deposits in the amount of \$1,550.00; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and her advocate, M.H. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Tenant, and gave her an opportunity to ask questions about the hearing process. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Proceeding. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by email sent on April 22, 2020. The Tenant said that she used the email address that she has used in the past to submit rent payments to the Landlord. I find it more likely than not that the Landlord was served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenant submitted the Parties' email addresses in her Application, and confirmed them in the hearing. The Tenant also confirmed her understanding that the Decision

would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Tenant to identify the Parties named as Applicants in the Application. The Tenant indicated that she, her 5-year old daughter, and her Advocate were the Parties identified on the Application. As only the Tenant and the Landlord are Parties to the tenancy agreement and to this proceeding, I modified the Application to reflect the Parties' standing, pursuant to section 64(3)(c) and Rule 4.2.

#### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to an order that the Landlord return her personal property?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2019, with a monthly rent of \$1,100.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$550.00 and a pet damage deposit of \$225.00.

In the Notice of Dispute Resolution Proceeding, the Tenant stated:

The Moving expenses are for short notice, per [the Landlord's social media account] advertisement to rent my suite in 2 days. . . . [The Landlord] did not accept my notice to move on Feb. 15<sup>th</sup>, so I did not plan on moving until March 1. On Jan. 27 [the Landlord] then told me he could rent for Feb. 1. So I put a damage deposit on another apt. and rushed to move without packing. I am a single mother of a 5 yr old and knew the affordable rent would be quickly rented out. I couldn't be left homeless so I tried to move.

I asked the Tenant to explain why I should award her the amounts she has claimed in her Application. The Tenant explained her circumstances, as follows:

I believe that the costs incurred were above what regular costs would have been, because I had asked on January 17<sup>th</sup>, if [the Landlord] would accept my giving him my notice [to end the tenancy] for February 15<sup>th</sup>. I had found a place that would be better for my daughter and me. [The Landlord] wasn't addressing issues of harassment and people coming into my suite – him, so he wouldn't

accept notice to move out. It meant I passed up that other suite, so I had to stick there.

The Tenant went on to say that she helped the Landlord by listing the rental unit in advertising listings and had about 40 responses. The Tenant said the Landlord ultimately took a deposit from a new tenant for a March 1, 2020 move-in date, which meant she had to be out by February 15, 2020. The Tenant said she was taken by surprise by this and had to rush getting packed and moved out. She said:

I had three days to go. I wasn't ready to move. It cost me more because I had the U-Haul longer, because my stuff wasn't packed. He created that problem for me. Purposely. He took a security deposit for March - a sister of a lady who lives below me.

#### **#1     Truck Rental → \$156.83**

The Tenant submitted a contract with the truck rental company, but not the invoice or receipt with payment; however, she did submit her bank statement, which contained five charges from this truck rental company; however, the amounts in the Tenant's bank statement add up to more than she claimed in her Application.

The Tenant said that she served the Landlord with the bank statement with these charges, so she said he was aware of the amount that she had paid and could claim in her Application. As such, the Tenant requested that the amount in her claim be increased to correspond with the amounts set out in her bank statement.

#### **#2     Movers → \$350.00**

The Tenant did not submit a receipt for this amount, so I asked her to explain this claim and her proof of having incurred this amount. The Tenant said that this was part of her moving expenses. She said hired a kid from the building and his friend to help her move. She said she hired them at \$15.00 per hour, but that they would not write her a receipt, because they were afraid of retribution from the Landlord.

#### **#3     Double the Security and Pet Damage Deposits → \$1,550.00**

The Tenant said that she is eligible for double the return of these deposits, because the Landlord did not follow the residential tenancy rules. She said he did not do a condition inspection of the unit at the start of the tenancy, and although the Parties did a "walk-

through” at the end of the tenancy, the Landlord forged the initials on his condition inspection report (“CIR”) done at the end of the tenancy.

Further, the Tenant said that he did not have her permission to keep the security and pet damage deposits, and he did not apply to the RTB to keep them. She added that she thought he should pay aggravated financial damages. She said:

Also, believe he should be fined \$5,000.00 for changing the locks on me and putting my things outside. I lost all my food, my TV, pictures I had - it was a lot.

The Tenant said that her Advocate provided her forwarding address to the Landlord in writing on February 15, 2020, on the Landlord’s move-out notations. She said the tenancy ended on February 12, 2020.

## **RETURN OF PERSONAL PROPERTY**

In her Notice, the Tenant said:

My Landlord unlawfully changed the locks and put my belongings outside. I had a 48” Toshiba TV that went missing and my vacuum is broken. My dishes were broken, including my daughter’s favourite mug, and there were wine glasses that my grandma gave me that were gone. He emptied the fridge and freezer full of food and left it outside to rot. I was going back to finish cleaning and get my stuff that day. He purposely did this. I want to sue him for aggravated emotional and financial damage.

### **1. 48” Toshiba TV - missing**

The Tenant said that the Landlord put her things outside the rental unit, including her television, which was gone when she returned. The Tenant said:

It was probably from 2012 – 4 or 5 years old, and it was a smart TV - a higher end Toshiba. It had cost \$300.00.

### **2. Broken Vacuum**

The Tenant said that her vacuum cleaner was broken when it was left outside by the Landlord. She said: “I have a receipt for \$150.00. I replaced it from the buy and sell to minimize the cost. It’s an upright cordless brand, which cost \$150.00, which the Landlord should cover.”

### **3. Daughter's Favourite Mug Broken**

The Tenant said that the Landlord broke her daughter's favourite mug, which her Dad had given to her. The Tenant said she can buy a new mug for her daughter for \$5.00 at an international retail store.

### **4. Wine glasses Her Grandma gave Her**

The Tenant said that her grandmother was a jeweller. The Tenant said that she had her grandmother's crystal wine glasses, which had sentimental value to her. She said:

I've lost everything that means everything to me, aside from my daughter. Everything that's meant anything. I've never had anything super-expensive. I have my necklace around my neck. I'm an accountant; I have ethics; it's instilled in me. I don't believe these people exist. I'm a single mom on a minimum standard of living.

### **5. Refridgerator and Freezer Food left Outside to Rot**

The Tenant said that she lost most of what was in her refrigerator and freezer, because the Landlord left it outside on the residential property. I asked her for a value of the amount she lost, and she said it was worth "...about \$300.00 bucks." She said:

There was meat in the freezer, a family pack of hamburger, chicken souvlaki sticks, homo milk, chocolate milk, fruit, frozen veggies in freezer. My freezer was loaded.

### **Analysis**

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Tenant testified, I advised her of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the

violation;

3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

Pursuant to section 7 of the Act, a party who does not comply with the Act, regulation or tenancy agreement must compensate the other party for the resulting damage or loss. Pursuant to Policy Guideline #16 ("PG #16"), damage or loss is not limited to physical property only, but also includes less tangible impacts, such as loss of rental income that was to be received under a tenancy agreement.

### **#1 Truck Rental → \$156.83**

The Tenant indicated that she inadvertently understated the amount she paid for this claim; however, I find that the Tenant's request to change the amount in her Application to match her bank statement would be prejudicial to the Landlord, as he would have to have done research to determine the differences between these two amounts.

When I consider the evidence before me in this matter, I find that the Tenant would have had to have rented a moving truck to move regardless of the Landlord's actions, as it was the Tenant's interest in moving that precipitated this cost. Accordingly, I dismiss this claim without leave to reapply.

### **#2 Movers → \$350.00**

Again, I find that the Tenant would have had to hire movers, regardless of the Landlord's behaviour. Further, the Act and Regulation do not authorize recovery of moving expenses for tenants.

### **#3 Double the Security and Pet Damage Deposits → \$1,550.00**

I find that the Tenant provided the Landlord with her forwarding address in writing on February 15, 2020, and that the tenancy ended on February 12, 2020. Section 38(1) of the Act states the following about the connection between these dates and the deposits:

**38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$550.00 security deposit and the \$225.00 pet damage deposit within fifteen days after February 15, 2020, namely by March 1, 2020, or to apply for dispute resolution to claim against the security and/or pet damage deposit, pursuant to section 38(1). There is no evidence before me that the Landlord returned any amount or applied to the RTB to claim against the deposits. Therefore, I find the Landlord failed to comply with his obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security and pet damage deposits. There is no interest payable on the deposits. I, therefore, award the Tenant with recovery of double the \$775.00 deposits, or **\$1,550.00**.

## **RETURN OF PERSONAL PROPERTY**

Section 65 of the Act states:

**65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

. . .

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

[emphasis added]

The *Residential Tenancy Act* Regulation states:

### **Landlord's obligations**

**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.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

**4. 48" Toshiba TV - missing**

According to the Tenant, the television was approximately 8 years old at the end of the tenancy. The Tenant said that the television cost her \$300.00 originally; however, she did not specify an amount she was seeking from the Landlord in her Application for this item. Still, I find on a balance of probabilities that the Landlord failed to store the Tenant's personal property pursuant to the Regulation and, therefore, that he breached his obligations in this regard. I find that the Tenant provided sufficient evidence to establish the first two steps of the test. Accordingly, I award her nominal damages of **\$150.00**, pursuant to section 7 of the Act and Policy Guideline #16.

**5. Broken Vacuum**

Based on the undisputed testimony before me, I find that the Tenant has established that the Landlord was responsible for breaking the Tenant's vacuum cleaner. I find that the Tenant has established the cost of this item as \$150.00, which she obtained by finding a used vacuum on the internet. I find this also meets the fourth step in the Test to minimize or mitigate this cost. I, therefore, award the Tenant with **\$150.00** from the



Landlord, pursuant to sections 7 and 67 of the Act.

#### **6. Daughter's favourite mug broken**

I find that the Tenant's undisputed evidence is sufficient to establish this claim on a balance of probabilities. I, therefore, award the Tenant with **\$5.00** for this item from the Landlord, pursuant to sections 7 and 67 of the Act.

#### **7. Wine glasses your Grandma gave you**

The Tenant did not put a value on the crystal wine glasses that she lost, although she indicated that they had great sentimental value, having come from her grandmother. I find that the Landlord's actions breached the Regulation, causing the Tenant to incur a loss. I, therefore, award the Tenant nominal damages for this claim, pursuant to section 7 of the Act and Policy Guideline #16. I award the Tenant with **\$150.00** from the Landlord for this claim.

#### **8. Refrigerator and Freezer Food left outside to Rot**

Based on the undisputed evidence before me overall, I find that the Tenant has provided sufficient testimony to support this claim on a balance of probabilities. I find that the Landlord breached the Regulation, thereby causing the Tenant to incur a loss of approximately \$300.00. I, therefore, award the Tenant \$300.00 from the Landlord for this claim, pursuant to sections 7 and 67 of the Act.

#### Summary

The Tenant is successful in her Application, as follows:

	<b>ITEMS CLAIMED</b>	<b>AMOUNT AWARDED</b>
1	Truck Rental	\$ 0.00
2	Movers	\$ 0.00
3	Security & Pet Damage Deposits	\$1,550.00
4	Television	\$ 150.00
5	Vacuum Cleaner	\$ 150.00

6	Daughter's Mug	\$ 5.00
7	Grandmother's Wine Glasses	\$ 150.00
8	Freezer and fridge food	\$ 300.00
	<b>TOTAL</b>	<b>\$2,305.00</b>

Given the Tenant's success in her claim, I also award her with recovery of her \$100.00 Application filing fee, pursuant to section 72 of the Act. I grant the Tenant a monetary order of **\$2,405.00** from the Landlord, pursuant to section 67 of the Act.

### Conclusion

The Tenant is successful in her Application for compensation from the Landlord in the amount of \$2,305.00, as she provided sufficient, undisputed evidence to meet her burden of proof on a balance of probabilities. In addition, the Tenant is awarded \$100.00 for her Application filing fee from the Landlord.

The Tenant is granted a total monetary order of **\$2,405.00** from the Landlord.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 23, 2020

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Residential Tenancy Branch