



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT RR

### Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Reduction of rent pursuant to section 65.

Both parties were represented at the teleconference hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant was represented by their agent (the "tenant"). The landlord represented themselves with assistance from a family member.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials. While the tenant said they were uncertain of the contents of the landlord's evidence package, as they testified that they were served with the materials I find each party served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties agreed that there was a typographic error in identifying the address of the rental unit. The dispute address has been amended in the style of cause of this decision to reflect the correct address.

### Issue(s) to be Decided

Should the original decision of July 30, 2020 be upheld, varied or set aside and replaced with a new decision?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agreed on the following facts. This fixed-term tenancy began in December 2019 and was scheduled to end December 2020. The monthly rent was \$3,050.00 payable on the first of each month. The written tenancy agreement provides that the applicant, under their correct given name, and as a representative of a corporate entity is the tenant.

The tenant submits that in April, 2020 there was water damage in the rental suite necessitating alternate accommodations. The tenant further says that sometime in May, 2020 the landlord barred the tenant from entering the rental unit without proper notice and they had no access to the suite or to their possessions. The tenant submitted into evidence a written statement from a third party who is not listed on the tenancy agreement, but purports to be an employee of the corporate tenant, stating that they were the resident of the rental unit and they relocated in April and were subsequently barred from re-entering the rental unit.

The tenant submitted correspondence between the parties where the tenant states “I did not live there and the place is exclusively for employees use”. The tenant submits that their employee was barred from accessing the rental unit by the landlord despite attempts to negotiate access.

The landlord submits that the rental unit was abandoned by the tenant sometime before June, 2020 which they discovered upon inspection of the rental unit. There were some correspondence between the parties dealing with the state of the tenancy and items left in the rental unit.

The landlord advised the tenant by an email dated July 2, 2020 that the items left in the rental unit were stored in accordance with the Act and Regulations. The landlord subsequently disposed of the property when the tenant failed to pick up the items.

The tenant seeks a monetary award in the amount of \$22,000.00 for their inability to access the rental unit and replacement of the items they say were in the rental unit. In their monetary order worksheet the tenant submits the following items they are seeking:

<b>Item</b>	<b>Amount</b>
Apple MBP Server	\$5,398.18
TV and Vacuum from Best Buy	\$2,606.79
Alternate Accommodation for April, May, June 2020	\$14,630.00
<b>TOTAL</b>	<b>\$22,634.97</b>

I note that the figure in their monetary order claim differs from the amount sought in their application. I further note that in their monetary order worksheet the tenant lists other items of furniture for which no amount is sought.

The tenant testified that in addition to these larger valued items there was a considerable amount of personal items of lesser value such as cutlery, and furnishings which they have not included in their claim.

The tenant submitted into documentary evidence receipts for the items claimed. The landlord's witness, a police constable, testified that the receipts submitted have been investigated and concluded to be forgeries. The witness confirmed that the retailer indicated on the receipts have stated that they did not issue them. The witness also testified that the statement from the third party who states they were the resident of the rental unit has also been reported to be fraudulent. The third party who is purported to be the author of the statement has disputed that they drafted or signed the document and disputes its contents in its entirety. The landlord's witness testified that police investigations for the forgeries of the receipts and the statement have been undertaken.

The tenant conceded that the receipts may be forgeries but submits that they did not create the forgeries and are the victims of fraud from a third party from whom they purchased the items. The tenant made no submissions on the issue of the statement said to be a forgery.

The tenant submits that the terms of the written tenancy agreement includes storage which they say was never provided. The tenant seeks a monetary award in the amount of \$100.00 for retroactive reduction of rent for the storage not provided. The tenant submitted into documentary evidence correspondence with the landlord where the issue of a storage locker is mentioned.

The landlord disputes that the tenant was without use of storage and submits that the reference to a storage locker is an additional amenity that was offered but never agreed upon.

### Analysis

Residential Tenancy Rule of Procedure 6.6 provides that the burden of proof lies with the claimant who must establish on a balance of probabilities the basis for their claim. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the totality of the evidence of the parties, I am unable to find that the tenant has met their evidentiary onus on a balance of probabilities. The tenant relies upon a written statement, titled "Sworn Affidavit", despite it not being sworn to a commissioner for taking oaths, and which was noted by the landlord's witness as disputed by the person alleged to have made the statement. The statement provides that the occupant of the rental unit was an employee of the corporate tenant, not the individual tenant named on the tenancy agreement, and that they were unable to use the rental unit, first due to water damage and then as they were barred from entry. I find the document to be of little value in establishing the tenant's position. The contents of the statement are not supported in the other documentary materials submitted by the parties and are actively refuted by the individual to whom the statement is attributed.

I find the nature and the extent of the purported water damage to the rental unit shown in the documentary evidence and correspondence to be minor in nature and not so significant that it would prevent a tenant from continuing to use the rental unit. As submitted by the landlord and undisputed by the tenant, the rental unit had multiple bathroom facilities that remained usable during the period when repairs were being undertaken. Furthermore, based on the correspondence I find that any interruption in the use of the facilities was minor and not so lengthy or significant that it gives rise to a basis for a monetary claim.

I find the copies of the correspondence between the parties submitted into evidence to merely display the parties' complaints with one another with little evidence of the underlying facts. I find that the correspondence is more in the nature of subjective complaints that have not been established, rather than evidence that there is underlying breaches on the part of either party. Both parties gave little cogent evidence of the circumstances surrounding how the rental unit was vacated. As stated above, the evidentiary burden lies with the claimant, and in the absence of sufficient evidence to establish that the tenant was barred from accessing the rental unit by the landlord, I find the tenant has not established their claim on a balance of probabilities.

I accept the evidence of the parties that there were some items remaining in the rental unit which were stored by the landlord. I find insufficient evidence that the tenant was barred from retrieving these items or that the landlord did not store them in accordance with the provisions of the *Act* and Regulations pertaining to abandoned personal property.

Furthermore, I find insufficient evidence that these items left in the rental unit had monetary value as submitted by the tenant. The undisputed evidence of the parties is that some of the receipts submitted into documentary evidence in support of the value of items are forgeries. Whether it was the tenant themselves who forged these evidentiary documents or, as they purport, some other party forged them without their knowledge, I find that the documents to be of little value in establishing the monetary amount of items.

In any event, the tenant has not met their onus to demonstrate that the landlord was in breach of the *Act* or regulations by removing the items, storing them off-site, or allowing the tenant an opportunity to reclaim the items.

I find insufficient evidence that the tenant was denied access to storage such that a retroactive rent reduction is appropriate. I accept that the written tenancy agreement indicates that storage is included in the monthly rent. I find little evidence that appropriate storage was not made available. I find the correspondence submitted into evidence references additional storage but I am unable to determine that this is anything more than an additional amenity that was being negotiated by the parties. The context of the reference in the correspondence shows the parties negotiating many aspects of the ongoing tenancy and I find the mention of storage to be insufficient to determine that the tenant was denied amenities under the tenancy agreement or that there was a reduction in the value of the tenancy.

I find that both cumulatively and individually the tenant has not met their evidentiary onus for any portion of their claim.

Conclusion

I affirm the decision of July 30, 2020.

This review 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: September 25, 2020

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Residential Tenancy Branch