



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WELBEC PROPERTIES INC and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes

**MNDCT, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with the advocate MG ("the tenant"). The agents KG, RS and PK, employees of the landlord, attended for the landlord ("the landlord"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The hearing lasted 81 minutes. During that time, two short breaks took place of 3 minutes during which time the proceedings were placed on pause before resuming with all persons in attendance. I did not speak to any party during this time.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. All parties confirmed they were not recording the hearing.

The email addresses were confirmed to which the Decision would be sent.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damages or compensation as well as reimbursement of the filing fee?

Background and Evidence

This is an application by a tenant for a Monetary Order in the amount of \$4,500.96 for loss of personal possessions allegedly taken by the landlord in violation of the Act.

The tenant testified that the tenancy began on October 10, 2019 of a 1-bedroom apartment in a multi-storey building. The tenant acknowledged receiving two 10 Day Notices for nonpayment of rent on February 12, 2020 and February 27, 2020. The tenant did not dispute the Notices. The landlord did not obtain an Order of Possession.

The parties agreed the security deposit provided by the tenant was \$350.00 and has not been returned to the tenant.

The tenant testified as follows. On March 16, 2020, he decided to move out. On that date he spoke with BT, a building manager and landlord agent. (BT's name appears on the first page.) BT verbally promised to keep the tenant's belongings for him. The tenant returned on March 26, 2020, went to his unit, and discovered all his belongings were gone. BT, no longer an employee of the landlord, submitted a written statement confirming the tenant's testimony in this regard.

The tenant testified he was given one key to the unit which was always in his possession. No one else had a key or could enter the unit.

The tenant claimed the landlord took his possessions and disposed of them without honouring the promise of BT and the storage requirements of the Act. He subsequently found one item, a picture, in a location where items are freely shared. He believed the landlord threw out his items. He seeks to recover the replacement cost of his missing belongings.

The tenant submitted a list of items he claimed were taken along with substantial evidence of the loss.

The tenant referenced the written statement of BT in which she said “the boys” went in to the unit and claimed this referred to the three male employees of the landlord, all of whom testified that they never went into the unit as claimed.

Each of the three agents denied taking the tenant’s belongings and disposing of them as the tenant claimed. They testified as follows. They do not have a key to the unit; the tenant was provided with four keys. If entry was required, they would call emergency services. The landlord has a storage facility and routinely stores tenant’s belongings there; the landlord does not dispose of a tenant’s belongings in a manner claimed by the tenant.

The landlord submitted a copy of a handwritten letter from the tenant TS dated January 15, 2020 in which TS stated “there is so much stuff coming and going all night long [to the tenant’s unit] and so many different people in and out of the unit. I was wondering if all the stuff coming into the apartment is stolen”. The tenant TS asked the landlord to “look into it”.

In the written statement, a copy of which was submitted, a maintenance worker for the building said she went into the unit in January 2020 to clean and she stated in part:

*[s]someone answered all I saw was duffle bags and beer cans, it was cold so I asked if I could come in for a minute and then I noticed a huge mess and no furniture just a bunch of guys sitting on the floor.*

The landlord has an internal security video system and testified they observed people coming and going from the tenant’s unit while he was away from March 16 to March 26, 2020.

The agent RS testified he observed the tenant come with a truck on March 26, 2020 and “take 2 pickup loads out of his apartment”. A written statement from RS to this effect was submitted.

The agent KG stated that he “observed various people entering and exiting [the unit] all day” on March 26, 2021. A copy of a note on the internal record keeping system to this effect was submitted as dated and signed by agent KG.

On that same day, the tenant TS wrote to the landlord, a copy of the letter being submitted as evidence, stating that he saw “pickups being loaded out of [the unit] today

and wondered if the tenant was moving or someone was “stealing stuff”. TS added that he spoke to the people doing the moving who said, “they are moving” and not to call the police.

The landlord submitted a copy of a handwritten message from the tenant TS dated April 4, 2020 asking the following of the landlord:

*Do you know any of these people who are coming and going from the unit taking stuff? I was wondering how many people are out there with the keys for the apartment”.*

The agents KG and BS stated that on April 17, 2020 they observed on the security system’s camera that the unit’s door was ajar. Agent BS testified he went to the unit at midnight and “witnessed the door wide open”. The unit was abandoned, and he saw only several garbage bags and a “busted piece of furniture” inside. The unit had no heat; he did not go in and locked the door.

The landlord stated that on April 20, 2020 the landlord’s maintenance worker and cleaner went to the unit. As referenced earlier, a signed written statement from the cleaner was submitted. It stated in part:

*On April 20, 2020 I was informed that the tenant [of unit #] had abandoned the unit. There was a little bit of damage, in the bathrooms and bedrooms on the walls. I pulled out 5 bags of garbage, a broken chair that was in three pieces, some random dirty dishes and discarded clothing left on the floor next to trash, a fair amount of beer cans and rubbish. Also, while I was doing my weekly cleaning of the building, I noticed many people coming and going.*

The landlord’s employee D.O. provided a dated written statement saying that on April 22, 2020 he removed “5 garbage bags of clothes and odds and ends as well as a broken chair” from the unit.

In summary, the landlord denied they went into the unit or took any items after the tenant vacated on March 16, 2020, leaving his possessions in the unit to pick up later. They stated that nearby occupants had observed many people coming and going in the unit from January 2020 until the end of March 2020; they believed that people other than the tenant had keys to the unit. They surmised that the tenant left the unit unlocked

or other key holders entered the unit and took the tenant's possessions. They also believed it is probable based on the security camera recording and the tenant TS's statement, that the tenant or other people came with a pickup on March 26, 2020 and took everything away.

### Analysis

The parties submitted many documents as well as considerable disputed testimony in an 84-minute hearing. 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. Only relevant findings based on admissible evidence are referenced. The principal aspects of the claim and my findings around each are set out below.

#### *Credibility of parties*

When the tenant and the landlord give differing versions of events, the credibility of the parties must be considered. I found the landlord to be well-prepared and believable. Three agents attended for the landlord, gave forceful and professional testimony.

I accept the tenant believed the landlord took his items left in the unit. However, I find the tenant's belief to be contradicted by more believable evidence and do not accept his version of events to be reasonable or likely. I found the tenant did not provide a convincing or plausible for his belief that the landlord took his personal possessions.

Therefore, I prefer the landlord's testimony as it was also well supported by evidence. Where the parties' evidence conflicts, I prefer the landlord's version of events.

#### *Tenant's Personal Property*

A landlord is responsible for dealing with abandoned property. If the value of the items left behind is worth \$500 or more, specific rules must be followed for storing, selling, or getting rid of it.

Items are considered abandoned if they are left behind after a tenancy has ended. Also, if the tenant hasn't occupied the rental property for one month and hasn't paid rent for that month, the landlord could consider items left behind to be abandoned after 30 days if:

- The tenant left items behind without agreement with the landlord to store them
- The tenant has told the landlord that they do not intend to return
- Circumstances are such that the tenant is not expected to return

Depending on the total value of the abandoned property, the landlord may need to store the items in a safe place for 60 days to allow the tenant a chance to claim them.

### *Burden of Proof*

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

*Residential Tenancy Policy Guideline #16* provides guidance in determining the value of the damage or loss under such circumstances. This guideline notes, “the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.”

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. Has the landlord failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the tenant proven the amount or value of their damage or loss?
4. Has the tenant done whatever is reasonable to minimize the damage or loss?

The tenant must meet the burden of proof with respect to each claim. The first part of the 4-part test is now considered.

*1. Has the landlord failed to comply with the Act, regulations, or the tenancy agreement?*

The tenant relied on a strong belief that the landlord took his personal possessions from the unit between March 16 and March 26, 2020. The landlord submitted substantial testimony from three employees. The landlord also submitted written statements.

I have found the landlord's evidence to be more believable and likely.

In consideration of the testimony and evidence, I find as follows.

I do not accept the tenant's assertion that he had the only key to his unit, always kept it in his possession, and no one else had access. I find it more likely than not that the landlord gave the tenant several keys and I believe the landlord's testimony in this regard. I find many people went in and out of the tenant's unit contrary to the tenant's claim.

I do not accept the tenant's claim that no one had access to his unit between March 16 and 26, 2020. Based on the landlord's and witness' statements, I find many people were coming and going to the unit before the tenant vacated. I also accept the landlord's testimony and the written submission from the tenant TS; I find that other people came in a pickup truck and took the tenant's possessions. I find the tenant either removed his own personal property or people authorized by him did so. In any event, I find the landlord did not take the tenant's possessions.

I find the tenant has not substantiated that he had the possessions listed in his evidence. I accept the evidence of the cleaner that she was in the unit in January 2020, other people were present, there was little furniture, and garbage was in bags. Therefore, I find the tenant has not met the burden of proof that he had the items he claimed to have been taken.

For these reasons, I find the tenant has failed on the first part of the 4-part test. I find he has not met the burden of proof that the *landlord failed to comply with the Act, regulations, or the tenancy agreement*.

The tenant must meet the burden of proof with respect to each aspect of the claim. As I have found the tenant failed to meet the first of the 4-part test, I therefore dismiss the tenant's claims without leave to reapply.

Conclusion

I dismiss the tenant's claims 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: August 24, 2021

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Residential Tenancy Branch