



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, RPP, FFT

### Introduction

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

- a monetary order of \$41,879.38 for compensation related to a notice to end tenancy for landlord's use of property, pursuant to section 51;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the landlord's agent, the landlord's translator, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 95 minutes from 11:00 a.m. to 12:35 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send a copy of this decision to both parties after the hearing.

The landlord said that she owns the rental unit. She confirmed the rental unit address. She confirmed that her agent, who is her husband, had permission to speak on her behalf at this hearing. She stated that her translator had permission to assist her and her agent with English language translation at this hearing.

The landlord's agent and the tenant identified themselves as the primary speakers at this hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). All hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing process to both parties. I informed both parties that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord’s agent confirmed receipt of the tenant’s application for dispute resolution hearing package and the tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant’s application and the tenant was duly served with the landlord’s evidence.

The landlord’s agent confirmed receipt of the tenant’s amendment and monetary order worksheet, filed on January 26, 2022, increasing the tenant’s monetary claim from \$3,300.00 to \$41,879.38. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant’s amendment and monetary order worksheet.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant’s application to remove the names of the tenant’s two children as tenants-applicants, who the tenant confirmed are minors at 8 and 9 years old, and would not be testifying at this hearing. The tenant consented to this amendment during this hearing. The landlord did not object to same.

At the outset of this hearing, the tenant stated that she was calling from the top of Whistler mountain, as she was spending time with her children during spring break, on a trip that she planned prior to this hearing. I informed the tenant that this was a serious legal proceeding and that I would be making a legal, binding, enforceable decision about her application.

The tenant said that she wanted to proceed with this hearing, and she would move to quieter areas, since people could be heard laughing and talking near her, throughout this hearing. I informed the tenant that I was required to mute her telephone line multiple times during this hearing, when she was not speaking, so that I could hear the

landlord's agent and translator properly. The tenant consented to same. The tenant confirmed that she could hear properly, and she was able to understand and speak English properly, during this hearing. I proceeded with this hearing on the basis of the tenant's consent.

#### Issues to be Decided

Is the tenant entitled to a monetary order for compensation related to a notice to end tenancy for landlord's use of property?

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

Is the tenant entitled to recover the \$100.00 filing fee paid for this application?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 15, 2018 and ended on August 5, 2021. Monthly rent of \$3,300.00 was payable on the first day of each month. A security deposit of \$1,850.00 was paid by the tenant and the landlord returned the deposit in full to the tenant. Both parties signed a fixed term tenancy agreement from August 16, 2020 to August 15, 2021, after which the tenant was required to move out of the rental unit. The tenant received an email, dated June 14, 2021, from the landlord, asking the tenant to vacate the rental unit by August 15, 2021, because her tenancy agreement was not being renewed. The tenant moved out earlier on August 5, 2021, and received 10 days of prorated rent back from the landlord of \$1,064.50. The tenant was not given a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") or a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit ("4 Month Notice") by the landlord in the approved Residential Tenancy Branch ("RTB") forms.

The tenant confirmed the following information, which is contained in her monetary order worksheet. The tenant seeks compensation under section 51(2) of the *Act* for twelve months' rent of \$3,300.00, totalling \$39,600.00. The tenant seeks registered

mail costs of \$13.59 each, for two mailings, totalling \$27.18, related to this hearing. The tenant seeks \$50.00 for gas costs, related to this hearing. The tenant seeks a "car repair fee" of \$800.00, a "cleaning fee" of \$220.00, a "moving boxes fee" of \$114.20, a "moving fee" of \$470.00, and the \$100.00 application filing fee. The tenant seeks the return of her cable box but if it is not returned, compensation of \$249.00.

The tenant testified regarding the following facts. Her cable company mailed her an apple cable box in order to watch Apple TV. The cable company sent it by mail to the rental unit address. The cost for a new box is about \$300.00 to \$400.00. The landlord threw out the cable box to the garbage without the tenant's permission. The tenant does not know why the cable company did not use her new address, which she updated online on their website. She spoke to the cable company over the phone, but could not hear a detailed explanation because her English is not very good, so maybe she missed information since she was unable to understand. She provided text messages of her conversations with the landlord, which is in a different language. She did not pay anything to the cable company for the cost of the cable box. She ordered the cable box and got it for free, as part of a promotional cable television plan. She asked the landlord to return it, and was told that the landlord's agent threw it out. She ordered a new apple cable box, received it from the cable company, did not pay for it, and currently has a television plan that she is using. If the landlord returns her cable box, maybe she can upgrade her television plan or return it to the cable company. She provided a photograph of an online cost for a new Apple cable box of \$249.00, but she has not paid for this. She asked the landlord to leave the cable box at her front door so she could pick it up. She does not recall the date, but she asked to come on a Monday to get the cable box, but the landlord did not respond. The landlord was told to keep the cable box until the third day but by the fifth day, had thrown it out.

The landlord's agent testified regarding the following facts. On November 13, 2021, the landlord received a mail package with a cable box, addressed to the tenant. The landlord sent messages to the tenant on a messenger service, on the same date, to pick up the cable box. The tenant told the landlord that the cable company was going to send her another cable box, so the tenant did not need it. The landlord threw out the cable box because the tenant said she did not require it. The tenant called back on November 19, 2021, saying that she wanted her cable box back but the landlord said that they threw it out already. The landlord disputes the tenant's claim for \$249.00 for the cable box. The tenant moved out on August 5, 2021, but on November 13, 2021, the tenant was still using the landlord's rental unit address for mail packages. The landlord has no idea why the tenant was still using the rental unit address for delivery of her cable box and did not know what could be in the parcel that was sent for the tenant.

The tenant clearly stated in the messages that she did not need the cable box because the cable company was sending her another one, so the landlord threw it away. The tenant threatened the landlord with an RTB complaint and said she would freeze the landlord's sale of the rental unit, after the landlord told the tenant that she threw out her cable box. The tenant tried to blackmail and threaten the landlord.

The landlord's translator stated that she is a certified translator and she read the messages between the landlord and the tenant on the messenger service, regarding the cable box. She said that the tenant told the landlord in the messages: "no worries you can keep it, [the cable company] will send me another one."

The tenant stated the following facts. She is seeking costs for cleaning and moving, from the landlord. She is also seeking mail and gas costs related to this hearing, for having to pursue this application against the landlord. She is seeking \$800.00 for the repair of her car because the landlord allowed the garage door to damage her car. She did not provide any invoices and receipts for her costs. She provided many documents in a different language and did not have them translated, as she is not a certified translator. She did final cleaning twice, in order to return the rental unit to the landlord. She is seeking cleaning and moving costs because the landlord lied to her. The landlord sent an email asking her to move out. Because the tenant is new in this country, she just left without knowing the RTB rules. The landlord wanted to sell the house. The tenant did not file an application at the time that she moved out because she did not know that she could. She is a single mother with two kids, did not want to cause any trouble, and agreed to move out. The landlord asked her to move out by August 15, 2021, in an email, and she moved out 10 days earlier on August 5, 2021. She found another place early and wanted to get it before someone else took it. She got 10 days of rent back of \$1,064.50, from the landlord, for moving early. She signed a fixed term tenancy agreement ending on August 15, 2021. The landlord sent her the email in June 2021, telling her that she had to move out by August 15, 2021, because the landlord did not want to renew the lease. At the end of July 2021, she talked to the landlord in person about moving out, and told the landlord that she would be leaving 10 days early.

The landlord's agent stated the following facts. The landlord disputes the tenant's entire application. The tenant had a conversation with the landlord directly, which the landlord's agent is not clear about, since it was between them. The tenant signed a renewal of the tenancy agreement in August 2020. In October 2020, the landlord got a notice from City Hall to do maintenance work because of damages caused by heavy rain and risk to a nearby slope. The landlord talked to the tenant, who said she could

move out early, and that she did not care. In June 2021, the landlord hired a contractor to renovate damages to the house. The landlord emailed the tenant with notice to move out, and the tenant agreed to do so. The tenant moved out 10 days early and the landlord paid her the prorated rent back for those days, since the lease was not renewed. The landlord paid the tenant \$1,064.50 for a refund of 10 days rent.

### Analysis

Pursuant to section 58(2)(a) of the *Act*, I have jurisdiction to decide the tenant's entire application of \$41,879.38, despite the fact that it exceeds the *Small Claims Act* monetary limit of \$35,000.00. The 12-month rent compensation amount of \$39,600.00, under section 51 of the *Act*, is excluded from the monetary limit of \$35,000.00.

### Legislation and Rules

The tenant, as the applicant, is required to present her application, including her evidence and claims.

The following RTB *Rules* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the tenant failed to properly explain her specific claims and the amounts for each claim.

This hearing lasted 95 minutes, so the tenant had ample opportunity to present her application. I provided the tenant with multiple opportunities to present her evidence and claims and respond to the landlord's submissions. I repeatedly asked the tenant if she had any other information to present during this hearing. The tenant spoke for the majority of the hearing time. The tenant did not review or properly explain her documents submitted for this hearing. The tenant only referenced some of her documents when I asked specific questions about them.

As noted above, the tenant was calling from the top of a mountain, while spending spring break with her children, during this hearing. The tenant did not appear to be concerned about this hearing or the legal consequences of it, despite being informed of same repeatedly at the outset of this hearing. The tenant could be heard repeatedly laughing when I informed her of the serious, legal consequences of this hearing. The tenant was more concerned with her vacation plans, than with her application, which she filed on her own accord.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties. I dismiss the tenant's entire application of \$41,879.38 without leave to reapply. I find that the tenant failed the above four-part test. I find that the tenant failed to provide sufficient evidence that she suffered any damages or losses or that she paid for same.

Many of the tenant's documents are in a foreign language. The tenant did not provide a certified translation of these documents. The tenant provided her own handwritten translations and online translations from unidentified websites, for only limited portions of some of the documents.

Cable Box Return and Compensation

Section 65(1)(e) of the *Act*, states the following with respect to the return of personal property:

*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;*

I find that the cable box is not the personal property of the tenant. The tenant confirmed that the cable box is the property of the cable company that sent it to her. The tenant stated that she did not pay for the cable box. She said that she received another cable box from the cable company and is using the new cable box, currently. She explained that if she got the cable box back, she could take it to the company or try to get a better cable television plan.

I find that the tenant did not provide sufficient documentary evidence that the cable company asked the tenant for the cable box back, that the tenant was required to return the cable box to the cable company, that the cable company charged the tenant for the cable box, or that the tenant was required to pay or did pay the cable company for the cable box.

I find that the landlord did not seize or receive the cable box, contrary to this *Act* or the tenancy agreement. The landlord received the cable box in the mail because the tenant failed to update her current address to the cable company. The tenant moved out on August 5, 2021, and was required to provide her forwarding address to her cable company, to have her cable box sent directly to her new address, not the rental unit. The tenant claimed that she provided a new address to her cable company, but they still sent the cable box to the tenant's old rental unit address. The cable box was received by the landlord on November 13, 2021, more than three months after the tenant moved out of the rental unit on August 5, 2021.

Further, the landlord does not have the tenant's cable box in her possession. I accept the affirmed testimony of the landlord, the landlord's agent, and the landlord's translator that the tenant told the landlord, by way of written messages, that she did not require



the cable box that was sent to the landlord, and another one was being sent to her by the cable company. Therefore, the landlord does not have possession of the cable box, so there is nothing to return.

Accordingly, I dismiss the tenant's application for an order requiring the landlord to return the tenant's personal property, without leave to reapply.

I also dismiss the tenant's application for compensation of \$249.00 for the value of the cable box, without leave to reapply. The tenant testified that she did not pay for the value of the original cable box, nor did she purchase a new cable box. She said that she had the original and new cable boxes sent for free, by the cable company. The tenant did not provide any receipts or invoices stating that she paid the above cost. The tenant only provided a photograph from a website showing a cable box and a cost to purchase one.

#### 12 month rent compensation

It is undisputed that the tenant did not receive a 2 Month Notice or a 4 Month Notice in the approved RTB form from the landlord, as required by sections 49 and 52 of the *Act*. It is undisputed that the tenant moved out pursuant to an email from the landlord.

Sections 49, 51 and 52 of the *Act*, state in part (my emphasis added):

- 49     (2) *Subject to section 51 [tenant's compensation: section 49 notice], a **landlord may end a tenancy***
- (a) *for a purpose referred to in subsection (3), (4), (5) or (6) **by giving notice to end the tenancy** effective on a date that must be*
- (i) *not earlier than **2 months** after the date the tenant receives the notice,*
- ...
- (b) *for a purpose referred to in subsection (6) **by giving notice to end the tenancy** effective on a date that must be*
- (i) *not earlier than **4 months** after the date the tenant receives the notice,*
- ...
- (7) ***A notice under this section must comply with section 52 [form and content of notice to end tenancy].***

- 51 (2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **must pay the tenant**, in addition to the amount payable under subsection (1), an amount that is the equivalent of **12 times the monthly rent payable** under the tenancy agreement if
- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

- 52 **In order to be effective, a notice to end a tenancy must be in writing and must**  
**(e) when given by a landlord, be in the approved form.**

Accordingly, the tenant's application to recover twelve months rent compensation totalling \$39,600.00, pursuant to section 51 of the *Act*, is dismissed without leave to reapply.

### Other Costs

The only hearing-related fees recoverable under section 72 of the *Act* are for filing fees. Therefore, the tenant's claims for registered mail costs of \$13.59 for two mailings, totalling \$27.18, and gas costs of \$50.00, are dismissed without leave to reapply. The tenant confirmed that these costs are related to this hearing. The tenant provided map printouts of the distance to drive to the RTB for this application, and mail costs related to mailing her application for this hearing.

The tenant's cleaning fee of \$220.00 is dismissed without leave to reapply. The tenant confirmed that she was seeking this cost because the landlord "lied" to her, causing the tenant to move out. I find that the tenant moved out of the rental unit on her own accord, as she was not served a notice to end tenancy by the landlord. Further, the tenant is required to clean the rental unit prior to moving out, as per Residential Tenancy Policy Guideline 1. Moreover, the tenant did not provide an invoice or receipt for same. The tenant only provided a document with an e-transfer amount of \$220.00, that does not provide sufficient evidence of who was being paid, what the payment was for, what work was done, where any work was done, or other such information. The tenant did not provide sufficient details of this claim during this hearing, such as when

the cleaning occurred, who cleaned the unit, what tasks were completed, the cost per hour or per cleaner, what areas were cleaned, or when any costs were paid.

The tenant's car repair fee of \$800.00 is dismissed without leave to reapply. The tenant confirmed that she was seeking this cost because the landlord's garage door damaged the tenant's car. The tenant did not provide sufficient details of this claim during this hearing, such as when the damage occurred, how exactly it occurred, what areas of the car were damaged, who fixed the damage, when it was fixed, how it was fixed, what the cost was, the costs per hour or per worker, if any costs were paid, or when any costs were paid. The tenant did not provide an invoice or receipt for the above cost.

The tenant's costs of a "moving boxes fee" of \$114.20 and a moving fee of \$470.00, are dismissed without leave to reapply. The tenant confirmed that she was seeking these costs because the landlord "lied" to her, causing the tenant to move out. I find that the tenant moved out of the rental unit on her own accord, she moved out 10 days early as per her own decision, and she received 10 days of pro-rated rent returned to her from the landlord of \$1,064.50. The tenant would be required to pay moving costs at the time of moving out, in any event. Moreover, the tenant did not provide sufficient documentary evidence, including invoices and receipts for same. The tenant only provided a document with an e-transfer amount of \$420.00, but no invoice or receipt for same. The tenant provided two invoices of \$57.09 and \$57.11 with balances due, but no receipts for payment. The tenant's documentary evidence does not provide sufficient information of who was being paid, what the payment was for, whether a payment was made, what work was done, where any work was done, or other such information. The tenant did not provide sufficient details of this claim during this hearing, such as when the moving occurred, who assisted her in moving, the costs per hour or per mover, what tasks were completed, or when any costs were paid.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's entire application is dismissed 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: March 17, 2022

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Residential Tenancy Branch