



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, 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 of \$5,847.60 for damage or compensation under the Act; for an order for the Landlord to return the Tenant's personal property; and to recover the \$100.00 cost of his Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide his 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 Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents, and his evidence in person on March 3, 2022. The Tenant said that he had a witness with him when he served the Landlord in person. The Tenant said that in addition to hearing documents served to the Landlord, the Tenant tried to give her a USB with the rest of his evidence; however, the Tenant said that the Landlord refused to take this evidence from him.

According to RTB Policy Guideline 12, “Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing.” I find this principle applies to all approved forms of service. Accordingly, I find the Landlord’s refusal to take evidence from the Tenant does not mean that it was not served properly. Rather, based on the evidence before me, I find that the Landlord was served with the Notice of Hearing documents and the Tenant’s evidence 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 provided the Parties’ email addresses in the Application, and he confirmed his in the hearing. He also confirmed his 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 advised the Tenant that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised him that he is not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to compensation for the Landlord’s failure to return the Tenant’s personal property, and if so, how much?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Tenant confirmed that the tenancy began on September 7, 2021, with a monthly rent of \$1,500.00, due on the first day of each month. The Tenant said that he paid the Landlord a security deposit of \$750.00, and no pet damage deposit. The Tenant confirmed that the Landlord has not returned his security deposit, despite having received the Tenant’s forwarding address in writing. The Tenant said he gave the Landlord his forwarding address in writing on February 11, 2022, which was also the day that he vacated the rental unit.

While testifying in the hearing, and in his evidentiary submissions, the Tenant had a

number of complaints about the Landlord's behaviour during the tenancy. He said that the Landlord has entered the residential property without first giving him proper notice, pursuant to the Act. The Tenant said that when he discovered the Landlord in his rental unit without notice, he set up a video camera to catch her the next time. I watched the video, which shows a woman walking around the kitchen and laundry room of a residential suite.

The Tenant also submitted 28 still photographs of the Landlord moving about the rental unit, entering the laundry room, the kitchen, the living room, and the bedroom. The Tenant said that the Landlord has gone through his refrigerator and dresser drawers. He said: "There was no emergency requiring the Landlord to enter the suite without notice." I note that the Landlord seemed to notice the camera at the end of her visit to the unoccupied rental unit. In the last photograph, she looked back from the front door, as she seemed to be leaving and fingered the camera.

The Tenant also submitted numerous photographs of a thermometer in the suite, showing the temperature to be consistently between 14 and 16 degrees Celsius. The Tenant said that the residential property was this temperature from November 2021 through February 2022.

The Tenant further explained his claims, in the hearing, as follows:

#### **#1 HOTEL BILL BECAUSE LOCKED OUT → \$1,097.60**

The Tenant said that after saying he was evicted in a text message, the Landlord locked the front gate, so that the Tenant could not enter the rental unit. He said he had no choice but to stay in a hotel for ten days. The Tenant submitted photographs of a locked gate, as well as text messages between the Parties illustrating that the Landlord did, in fact, lock the gate.

The text messages indicate that the Tenant attended the residential property with the police, but that the Landlord would not answer the door or unlock the gate to the rental unit.

The Tenant said he picked the cheapest hotel available in the city at the time. He said he did not keep the receipts from the hotel stay, but he said it cost him \$90.00 per night to stay there for ten days. The Tenant submitted a copy of an email from a hotel thanking him for having stayed there. However, it does not indicate when or for how long the Tenant stayed at the hotel, nor how much the Tenant was billed.

## **#2 FOOD LEFT IN CUPBOARD – COULDN'T COLLECT → \$250.00**

This was the Tenant's request for the return of his personal property. The Tenant said that the Landlord would not let him into the rental unit to recover the food that he had stored there. He said the food he left in the cupboard was primarily canned goods, a bag of potatoes, and onions. He also said:

I feel I should have had the right to have them returned to me. Food items are hard to put a price on, but it's roughly \$250.00. I don't keep receipts for my groceries, so can't prove the price of that.

The Tenant submitted some photographs of food in a cupboard, including a bag with eight or more onions in it.

## **#3 RECOVERY OF PRO-RATED RENT → \$750.00**

The Tenant said that the Landlord did not reimburse him for the half a month that he was locked out of the residential property. He said: "That would be \$750.00 – see the screen shot of her text message saying, if I moved out, she would return the prorated amount of my rent. It goes back further, but I went with just half a month's rent."

The Tenant explained that he had paid full rent for February 2022, but that he was locked out on February 11, 2022. He is claiming reimbursement of rent paid for the portion of time in which he was locked out of the rental unit

The Tenant submitted copies of texts exchanged between the Parties, which I have reproduced as written, as follows (I included more than necessary to give a context to the tenancy):

February 5, at 3:06 p.m., the Landlord wrote:

You are evicted effective immediately. Leave as you found this suite and your rent prorated and damage is refunded. I will be downstairs tomorrow at 1PM as per police request. [emphasis added]

February 7, at 10:43 p.m., the Landlord wrote: "Confirm"

The Tenant responded:

Confirm what?

The Landlord said:

Regular clear communication [*sic*] is needed moving forward. You have threatened me too many times and I will be calling in more support.

The Tenant responded:

I have never threatened you

In an undated text exchange [saying "Today 6:27 PM"], the Parties texted:

Landlord: Leave the suite as you found it

Tenant: Ok

Landlord: Set up an appt with a professional carpet rep  
Do not threaten me by coming here in the dark and raising hell

Tenant: Pardon me? I was vacuuming

Landlord: Not at night in the dark. do not cause anymore nightmares  
I have activated the panic alarm. get out and quit threatening me

At 8:10 p.m. the Parties texted:

Tenant: I would get out but the gate is locked

Landlord: Hmm who did that ..

Tenant: Why did you set off the alarm when the police were there this evening?  
Why didn't you answer the door for the police when you were standing in the living room?

Landlord: Get the suite cleaned perfectly as you found it then get out no damage or theft.

Tenant: Remove the lock and then I can

Landlord: Just get out

Tenant: So I don't have to clean and I get my full deposit back?

Landlord: I've told you very clearly to rules and you decided to be a pig

Tenant: You also expect me to accept 58 degree temperature

Landlord: You are responsible to clean up this nightmare you created

Tenant: And I will

Landlord: Try to be a man not a baby

Tenant: Once you unlock the gate  
Name calling isn't nice

Landlord: Climbing over you have the key

Tenant: Good night

#### **#4 RETURN OF DOUBLE THE SECURITY DEPOSIT → \$1,500.00**

The Tenant said that he vacated the rental unit and provided the Landlord with his forwarding address in writing on February 11, 2022. However, he said that the Landlord has not returned any portion of his security deposit.

The Tenant said:

Half a month's rent was not returned to me – that would be **\$750.00**. See a screen shot of her text message; she said if I moved out, she would return the prorated amount of my rent and my security deposit.

#### **#5 STRESS FROM LANDLORD'S BEHAVIOUR → \$2,250.00**

The Tenant said that he seeks compensation from the Landlord for the stress he has endured in the six months of the tenancy. In the hearing, the Tenant explained his situation, as follows:

I need an award for stress, because of staying in a hotel room and desperately searching for new accommodation. I researched what an average or fair price for undue stress and loss of sleep, and what have you, and it was on the lower side of the average at \$25.00 a day.

See the photos of the temperature readings – they were 13 to 16 for three

months. She would blare the music right until 11 o'clock to avoid the bylaw. She locked the gate on me. I couldn't upload it, but I have a video of her screaming at me to pick up her dog feces. I found that looking online, it's hard to find a value, because different people handle stress differently. I'm not on any medications for anxiety, and I have a pretty thick skin, so I went with the lowest dollar figure I could find.

The Tenant said he was forced to live with the low temperature for over three months, so he calculated his claim as 90 days of cold times \$25.00 a day, equals his claimed amount of \$2,250.00.

The Tenant explained how the stress of living in this rental unit affected him at work:

It did reflect on my mood at work. I've only been in [the city] for seven months, and I was short-tempered and had trouble focusing at work – the work wasn't stressful, but the stress from home was affecting my work.

I had to put the number in when I started my application. The difference would be the start of my new tenancy and the end of this tenancy. I couldn't find a way to amend the amount. I'm not trying to be greedy – I'm looking for compensation for losses incurred.

### 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 let him know how I 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")

**#1 HOTEL BILL BECAUSE LOCKED OUT → \$1,097.60**

I find from the Tenant's evidence that the Landlord locked him out of the residential property for unspecified reasons. While this is a breach of the Act and tenancy agreement, I find that the Tenant did not provide sufficient proof of the cost he incurred in the form of receipts from the hotel. As such, I find that the Tenant has not fulfilled the third step of the Test, and therefore, I dismiss this claim without leave to reapply.

**#2 FOOD LEFT IN CUPBOARD – COULDN'T COLLECT → \$250.00**

Again, the Tenant did not indicate the amount or type of food that was left behind in the rental unit, beyond photographs of food in a cupboard; however, it is unclear why the Tenant would happen to have a photograph of the food in his cupboard, since he was locked out.

The Tenant did not provide any prices of similar items to what he claimed were left behind or any other documentary evidence to support his claim. I, therefore, find that the Tenant has not provided sufficient evidence to prove this claim on a balance of probabilities. As such, I dismiss this claim without leave to reapply.

**#3 RECOVERY OF PRO-RATED RENT → \$750.00**

I find from the Tenant's testimony and the text messages set out above, that the Landlord agreed to reimburse the Tenant for a rent overpayment for the last half of February 2022, during which time the Tenant was locked out of the rental unit. As such, I award the Tenant with **\$750.00** from the Landlord, pursuant to section 62 of the Act.

**#4 RETURN OF DOUBLE THE SECURITY DEPOSIT → \$1,500.00**

I accept the Tenant's undisputed evidence that he vacated the rental unit on February 11, 2022, and that he gave the Landlord his forwarding address in writing on that same day. I also accept the Tenant's undisputed evidence that the Landlord has not returned his security deposit to him.

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions



within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

The undisputed evidence is that the Landlord has not returned the Tenant's security deposit, nor has she applied for dispute resolution to claim against the deposit. The last date of the tenancy, and the date on which the Tenant provided his forwarding address to the Landlord was February 11, 2022. The Landlord had 15 days to return the security deposit or apply for dispute resolution, claiming against the security deposit. She had to do this by February 26, 2022. However, there is no evidence before me that the Landlord did either requirement at the pertinent time.

Accordingly, I award the Tenant with double the \$750.00 security deposit or **\$1,500.00** from the Landlord, pursuant to section 38 of the Act.

#### **#5 STRESS FROM LANDLORD'S BEHAVIOUR → \$2,250.00**

I find that the Landlord's action regarding the elements of the tenancy listed below caused unnecessary stress for the Tenant. I find that in this set of circumstances, the Tenant's stress is a recoverable loss or damage, pursuant to section 62 of the Act.

- repeatedly entering the rental unit without having given notice of the planned visit, and an acceptable reason;
- the temperature was kept unreasonably cold for three months;
- the Tenant was illegally evicted;
- the Tenant was illegally locked out of the rental unit; and
- these behaviours affected the Tenant's ability to sleep and work effectively at his job.

I find that the Landlord's actions listed above result in the Tenant being eligible for compensation for undue stress caused by the Landlord, pursuant to section 62 of the Act. I find that the Tenant's request for compensation of \$25.00 a day for 90 days is reasonable in the circumstances. I award the Tenant with **\$2,250.00** from the Landlord pursuant to section 62 of the Act.

#### Summary

The results of my analyses of the Tenant's testimony and documentary submissions are set out in the following table.

	Receipt/Estimate From	Amount Requested	For	Amount Awarded
1	No hotel bill	\$1,097.60	Being locked out of rental unit	\$0.00
2	No receipts	\$250.00	Food not returned	\$0.00
3	Recovery of half a month's rent	\$750.00	Promise of rent reimbursement	\$750.00
4	Tenancy agreement /Act	\$1,500.00	Return of double the security deposit	\$1,500.00
5	Tenant's evidence	\$2,250.00	Stress of tenancy	\$2,250.00
			<b>Total monetary awards</b>	<b>\$4,500.00</b>

Given his success in this Application, I also award the Tenant with recovery of his **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act.

I grant the Tenant a Monetary Order from the Landlord of **\$4,600.00** pursuant to section 62 of the Act.

### Conclusion

The Tenant is predominantly successful in his Application for compensation from the Landlord for her behaviour and treatment of the Tenant during the six-month tenancy. The Tenant provided sufficient, undisputed evidence to prove most of his claims on a balance of probabilities and to warrant monetary awards totalling **\$4,500.00**.

The Tenant is also awarded recovery of his **\$100.00** Application filing fee from the Landlord.

The Tenant is granted a **Monetary Order** of **\$4,600.00** from the Landlord in this matter. 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: May 04, 2022

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Residential Tenancy Branch