



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDC, MNSD

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for lost possessions due to the landlord's failure to comply with the Act and agreement.

These proceedings are a re-hearing of the tenant's application and the dispute originally heard on September 11, 2013. The landlord did not appear at the first hearing and made a successful review consideration application. The respondent landlord was granted a review hearing on the basis that the landlord was unable to attend the original hearing due to circumstances that could not be anticipated and were beyond the landlord's control. The decision and the order from the September 11, 2013 hearing, that were issued on October 8, 2013, were therefore suspended and a re-hearing was scheduled to take place today.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the tenant entitled to monetary compensation for missing possessions and wrongful eviction?

### **Background and Evidence**

This tenancy commenced April 1, 2012. The rent of \$1,250.00 was due on the first day of each month. The tenant paid a security deposit of \$625.00.

The tenant testified that the rental unit was located across the street from the landlord's home. During the tenancy the tenant lived in the rental unit with two dogs and two cats and, on occasion, with a roommate.

The tenant testified that her latest roommate, "K", an occupant who was living in the unit with her, vacated early in September 2012 and did not share the unit with the tenant thereafter. The tenant testified that "K" no longer had a key to her unit.

The tenant testified that, at a dispute resolution hearing held on September 13, 2012, the the parties agreed that the tenancy would end at 1:00 pm on October 31, 2012, and an order of possession was granted to the landlord effective October 31, 2012. The mutual agreement reached between the parties is excerpted below:

"SETTLEMENT AGREEMENT"

*During the hearing, the parties agreed to settle the issue of tenancy on the following conditions:*

- 1) The parties mutually agree to end tenancy effective October 31, 2012 at 1:00pm.*
- 2) The landlord is granted an order of possession effective October 31, 2012 at 1:00pm." (Reproduced as written)*

The tenant testified that she paid all of the rent owed for September 2012 and intended to pay the rent for October 2012 when it was due. However, the tenant was placed in custody and incarcerated on September 14, 2012. The tenant testified that she made arrangements with her mother and her friends to have her pets taken care of, her unit monitored and the contents of her rental unit taken care of until the tenancy ended on the move-out date of October 31, 2012.

According to the tenant, when the tenant's designated friends arrived at the suite on September 16, 2012, to feed the pets, they were surprised to discover that the landlord was already allowing numerous different people to enter the unit and take away the contents.

This incident was confirmed during the hearing by the tenant's witness, "T", who was present on the day in question. The witness described seeing people removing the tenant's personal belongings such as the television, X-Box, and furniture. The witness said that there was also a truck loaded with items owned by the tenant.

The witness testified that the landlord refused to allow the people who were authorized by the tenant to get close to the house. The witness testified that, when she called the police, the landlord became very aggressive with her. According to the witness, when the police arrived they told the witness that she should obtain a written letter from the tenant stating that she had the tenant's permission to enter the rental unit.

The tenant testified that she heard what transpired, and, unable to take action to ensure that her belongings and pets were safe, she became frantically worried about her pets. The tenant testified that it was reported that the animals had been turned loose. The tenant testified that, because she was incarcerated, it took a little while to arrange to get the authorization letter to her supporters to entitle them to be let into the suite.

The witness testified that, once they had obtained a letter from the tenant two days later, authorizing them to enter the unit to care for the tenant's pets and possessions, they returned to the unit with the letter. The letter states that the people named been duly authorized to access the suite on behalf of the tenant. The letter also provides the name and number of the tenant's lawyer and further instructs the landlord to contact the tenant's lawyer if there are any questions or concerns.

According to the witness, when they returned to the tenant's suite, they were shocked to find that the locks on the rental unit had been changed by the landlord. The witness stated that, even though the authorization letter was given to the landlord, the landlord continued to refuse them access to the unit.

The witness stated that over the next several days they made numerous attempts to get access to the unit to retrieve the tenant's possessions and attend to the pets, but the landlord refused to respond and kept them locked out.

The witness testified that, on September 28, 2012, she received a call from another friend of the tenant who lived nearby the rental unit. This friend informed the witness that she was watching as the tenant's belongs were being thrown into the back yard and the alley and loaded into a truck at the rental unit. The witness testified that she and the tenant's other friend immediately went to the rental unit where they saw that the unit was being cleared out and everything was loaded up for the dump.

The tenant testified that she then had no choice but to wait and, by the time her supporters were contacted by the landlord regarding the tenant's belongings, they arrived to find that nothing was left except some broken furniture.

The tenant stated that she contacted the Residential Tenancy Branch and was advised to write the landlord a letter about the landlord's legal obligations under the Residential Tenancy Act and Regulation, and provide the landlord with the name of the tenant's agent and a list of her belongings, with a demand that they be returned. A copy of this communication, dated October 9, 2012, is in evidence. This letter included a detailed inventory list of her possessions, that she was demanding must be returned.

The tenant testified that her friend delivered this letter personally to the landlord but was told that she should "mind her own business". Neither the tenant , nor her friend, ever

heard anything else from the landlord. The tenant testified that she never got a satisfactory accounting from the landlord about what happened to her belongings.

The tenant testified that she was extremely distraught about her pets and the removal of her possessions by the landlord but was helpless to do anything more than send friends and family to assist. The tenant felt that the landlord had taken advantage of her situation, particularly as she knew that she had legal possession of the unit until October 31, 2012.

The tenant pointed out that, within days of her incarceration on September 14, 2012, the landlord was already apparently engaged in looting her unit and allowing the removal of her property. The tenant testified that the landlord then went even further during the two weeks between September 15 2012 and the end of the month by finally discarding all of her possessions, leaving only worthless items and re-renting the unit to a third party during October 2012.

The tenant testified that she was mortified to find out that her pets were apparently let out of the unit by the landlord. The tenant and her supporters confirmed with the SPCA that they had picked up her female cat, which was subsequently adopted. One of the tenant's dogs that was abandoned outside the unit, and left to frantically run loose, ended up being euthanized. The tenant was never able to find out what happened to her Chihuahua and the male cat. Based on reports from friends who lived in the area and who reported seeing some of the pets roaming loose, she believes that the landlord let all the pets out in mid-September 2012.

The tenant provided a document containing a list of every item that was in the rental unit on the day she was detained. This list includes electronics, bed and couch newly bought at the start of this tenancy; assorted personal things; clothes, jewellery, perfume, and prescription glasses; baby supplies; bikes; and other household items. The tenant assigned values to these things which she testified were based upon their value as "used" goods.

The list is very detailed and includes many items of sentimental value that are irreplaceable such as a locket containing some ashes from her deceased baby; footprint, umbilical cord and ultrasound pictures of her son; photo albums; a camera containing pictures and videos; and her wedding dress.

The tenant testified that she lost virtually all of her worldly possessions valued in excess of \$33,000.00. the tenant is claiming compensation of \$25,000.00 which is the limit under the Residential Tenancy Act.

The tenant testified that she gave her forwarding address in writing to the landlord when she served the landlord with the application for dispute resolution in June 2013.

The landlord acknowledged that she was aware that people were entering the tenant's unit on or around September 16, 2012. The landlord pointed out that she did not stop a prior occupant, "K", from entering the tenant's rental unit and removing items because, according to "K" she still had a key to the unit and did not need to be let in by the landlord. According to the landlord, "K", told her that she was only going to retrieve her own personal items that she had allegedly left in the unit when she moved out earlier. The landlord did not explain how she knew who actually owned the possessions that were being removed.

In support of the landlord's claim that "K" was permitted to enter the unit, the landlord had submitted a copy of a written tenancy agreement between the landlord and "K" that was apparently signed on July 1, 2012 and showed a monthly rental rate of \$625.00. The landlord had apparently also put this forth as verification that "K" was entitled to enter the rental unit in the tenant's absence when the police arrived. The landlord testified that, the police told the landlord that "K" was validly entitled to enter the unit because she was a tenant.

However, the landlord did not explain how this individual agreement with "K" could possibly be in effect at the same time the same unit was being rented to the tenant. A copy of the tenancy agreement between the tenant and landlord was in evidence showing monthly rent of \$1,250.00. This agreement was signed between the applicant tenant and the landlord on April 1, 2012 and, based on records from the previous dispute hearing, held on September 13, 2012, the tenancy between the applicant tenant and the landlord would continue until the effective date of the mutually agreed-upon order of possession terminating the tenancy on October 31, 2012. The tenancy agreement allegedly signed on July 1, 2012 between the landlord and "K" for rent of \$625.00 made no mention of the current tenant.

Although the landlord acknowledged the locks were changed, the landlord denied changing the locks without authorization.

The landlord acknowledged that, although the tenancy was to remain in the tenant's possession until October 31, 2012, the landlord did take possession of the rental unit at the end of September 2012.

The landlord gave several reasons why she felt she was entitled to take over the suite and re-rent it. The landlord stated that she received advice from Residential Tenancy Branch and from the police that led her to conclude that she was legally entitled to take possession of the suite. In explaining the basis for her conclusion, the landlord pointed

out that the tenant had given some third parties the right to oversee removal of her possessions in writing, which would indicate that the tenant had relinquished possession. The landlord also pointed out that the tenant could not pay rent and was in jail.

The landlord made reference to the letter that the tenant wrote to authorize named individuals to access her suite in order to take care of her pets and possessions as proof that the tenant was moving out. The landlord did not explain why she chose not to contact the tenant's lawyer as directed in this communication. The landlord testified that she believed that she had the legal right to possess the suite and had the authority to re-rent the unit, without a valid Notice from the tenant terminating her tenancy. The landlord admitted that she did not have an Order of Possession effective anytime in September and never obtained a legal Writ of Possession.

The landlord denied ever confiscating or removing any of the tenant's possessions and stated that the tenant's property was only removed by the tenant's friends. To support her claim that others had removed the tenant's property, the landlord made reference to a type-written letter dated September 30, 2012 from the landlord stating,

*"(Tenant) has given authorization letter to ("S") to move her belongings....At 11AM on Sept.30/12, a moving company was hired by ("S") to move (Tenant's) bed frame, mattresses, dressers, night tables, coffee table and other belongings. Also ("J") and her friend ("T") took (Tenant's) clothes."*

The document was signed by the landlord and was also purportedly signed by "S" who was not present at the hearing. The witness who attended the hearing disputed the validity of the document and the statements contained in the letter. The witness testified that the landlord insisted that a letter she pre-typed must be signed before she would permit access. The witness pointed out that, by the time the landlord unlocked the suite for them, there was nothing of worth left to remove from the rental unit except broken items and garbage. According to the witness, all of the tenant's personal property and items of value had already been taken out of the unit by others.

The landlord repeatedly testified that all of the tenant's personal items were left in the unit untouched by the landlord and that only the alleged co-tenant, "K" and persons properly authorized by the tenant were allowed to remove anything.

The landlord did not deny that no attempt to store the contents of the unit were ever made prior to re-renting the suite to another renter in October 2012. The landlord also admitted that, other than the items listed in her typed letter of September 30, (*bed frame, mattresses, dressers, night tables, coffee table and other belongings*), the

landlord neglected to create a detailed inventory of all property “abandoned” in the unit or removed from the unit in the tenant’s absence.

### Analysis

The evidence before me is that the rent had been paid to the end of September 2012 and the landlord did not have an order of possession that allowed her to take possession of the rental unit before October 31, 2012 and did not obtain a writ from the Supreme Court that would allow the landlord to evict the tenant or remove her possessions.

In addition, I find that the circumstances in this case are not such that the tenant’s possessions in the unit would ever meet the definition of “abandoned” as outlined in part 5 of the *Residential Tenancy Regulation*.

Even if the landlord did have a legal right to take possession of the rental unit, which was not the case here, the Regulation sets out the detailed procedure that must be followed by a landlord to protect and return personal property, if a tenant abandons property worth more than \$500.00 in the rental unit. I find that the landlord did not follow *any* of the mandatory procedures. I further find that the landlord ignored the requisite duty of care and neglected to practice due diligence in ensuring the security and preservation of the tenant’s “abandoned” possessions, pursuant to paragraph 30 of the regulation.

I find that, not only did the landlord fail to follow the legal procedures she overtly thwarted any efforts by the tenant to deal with her pets and personal property.

I do not accept the landlord’s contradictory explanations about what led to her believing that she had the authority to take over possession of this rental unit and form a tenancy with another renter during a period that the tenant clearly had the legal right of possession.

As a result of the landlord’s breach of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, I find that the landlord is responsible for the losses suffered by the tenant as a result of the landlord’s action.

In determining the losses, I find that, had the landlord kept an inventory of the contents of the purportedly “abandoned” items in the suite as required by legislation, the landlord could have presented an accurate accounting of what she observed had been released to third parties and what genuinely remained in the suite.

I find that, during the hearing, the landlord was afforded an opportunity to provide verbal information with respect to specific items claimed a missing by the tenant, based on her

recollection of what the contents consisted of. However, the landlord was not able to provide any information. I find that the documentation available that provides a detailed listing of what is missing, is the inventory list provided by the tenant to the landlord in the tenant's letter of October 9, 2012. I accept that this data is the most reliable source of what possessions were lost and their respective values.

The application of the law on damages is summarized in *Residential Tenancy Policy Guideline 16: Claims in Damages*, which states that an arbitrator can award a sum for out-of-pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss. On a claim by a tenant for damages for breach of the abandonment regulations by the landlord the normal measure of damages of the market value of the lost articles, i.e. the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant.

I accept the tenant's testimony and evidence of the value of the items confiscated, lost or discarded.

Like all claims of this nature the tenant's inventory of belongings and the value assigned to them are approximations and no specific value can be assigned to loss of items of significant sentimental value and of pets. Having considered the egregious conduct of the landlord and the nature of the items lost by the tenant, I award the tenant \$23,750.00 as general damages.

With respect to the claim for payment of double the security deposit, I find that the tenant's application for dispute resolution filed in June 2013, and served on the landlord, did contain the tenant's forwarding address in writing.

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has done neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue. According I find that the landlord must pay the tenant the sum of \$1250.00 which represents double the security deposit paid by the tenant.



I find that the tenant has established total entitlement to compensation of \$25,000.00, comprised of \$23,750.00 in damages and \$1,250.00 representing a refund of double the \$625.00 security deposit.

I hereby grant the tenant a monetary order pursuant to section 67 for \$25,000.00. This decision is final and binding order must be served on the landlord and, if necessary, it may be filed in the Small Claims Court and enforced as an order of that court.

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: January 14, 2014

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Residential Tenancy Branch

