



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MND MNR MNDC MNSD RPP RR FF

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for June 21, 2017. I had allowed the landlords' adjournment application to allow the landlords to serve the tenant with their dispute resolution hearing package ("Application") and related documentation pursuant to a substituted service order made by an Arbitrator on March 13, 2017 for both parties to send any tenancy-related and RTB-related correspondence to the other party's email address. This substituted service order was made subsequent to the landlord's filing of their application on February 12, 2017.

The adjournment decision dated June 22, 2017 noted the requirements for service of the hearing package and evidence. The tenant acknowledged receipt of all hearing documents, including the original hearing package, and was ready to proceed with this matter. .

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- a monetary order for compensation for loss or money owed, and for the cost of emergency repairs already made under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlords to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords' agent, BS ('landlords'), testified on behalf of the landlords, and had full authority to do so.

The tenant confirmed receipt of the landlords' application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlords' application and evidence. The landlords confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application.

#### **Preliminary Issue – Tenant's Late Evidence**

The tenant submitted evidence as part of his application, but this evidence was not received by the Residential Tenancy Branch (the RTB) until August 28, 2017. The landlords testified that they did not receive this evidence, which included the Monetary Order Worksheet and supporting documents for the tenant's application. The landlords testified that this evidence was not served to them, and they did not have an opportunity to review this evidence before the hearing.

The tenant testified in the hearing that he had served this evidence by way of email to the landlords as part of his original application on June 9, 2017. The tenant provided an image of the email, which depicts four PDF attachments. As I am unable to view these attachments and the landlord testified that he did not receive this evidence, and in the absence of sufficient supporting evidence to demonstrate that this evidence was provided to the landlords, I am not satisfied that the landlords were served with this evidence.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. In this case, the landlords

testified that they had not received the tenant's evidence, and they testified that admitting this late evidence would be prejudicial to them as the landlords did not have the opportunity to review this evidence before the hearing. The RTB did not receive the tenant's evidence until August 28, 2017. Furthermore, I find that the tenant did not provide sufficient proof of service to establish that his evidence was served upon the landlords within the timelines prescribed by rule 3.14 of the Rules. On this basis I find that there is undue prejudice to the landlords by admitting the tenant's evidence which may not have been properly served to them. Thus I exercise my discretion to exclude the tenant's evidence.

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

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

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

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to return of his security deposit?

### **Background and Evidence**

The undisputed evidence is as follows. The tenancy began October 14, 2016 as a prepaid fixed term tenancy ending April 14, 2017. The payable prepaid rent was in the amount of \$16,250.00. At the outset of the tenancy, the landlords further collected a security deposit from the tenant in the amount of \$1,250.00 which they retain in trust. An order was made on April 19, 2017 by an Arbitrator for the landlord to retain \$957.97 of the tenant's security deposit in satisfaction of the monetary award given to the landlords. The landlords confirmed in the hearing that the tenant provided his forwarding address to them on April 3, 2017, and that they were still in possession of the remaining \$292.03.

The tenant testified in this hearing that this home was not his primary residence, and he returned on the evening of March 12, 2017 to discover that the landlords had changed the locks while he was away, and had removed all his belongings. The tenant had to break into the home on the evening of March 12, 2017 in order to sleep.

The tenant contacted the landlords requesting the return of his personal belongings, and the landlords indicated to him that they were holding them as collateral to ensure that he would leave the residence. The tenant testified that the landlords, to this day, have not returned any of his personal belongings. A hearing was held before an Arbitrator on March 13, 2017 in regards to this tenancy, and a mutual agreement was reached by both parties for this tenancy to end on April 14, 2017 at 1:00 p.m.

The tenant provided sworn testimony during the hearing that he was unable to gain access to the home after the hearing on March 13, 2017. The tenant testified that the landlords' friends met him on March 14, 2017 to give him new keys, but they did not work. The tenant testified that since the landlords had changed the locks, and denied him access to his property and the rental home, he considered March 14, 2017 as the end of this tenancy. The tenant testified that that he stayed in a hotel from March 16 through to March 18, 2017 as he was denied access to the home as the keys given to him by the landlord's friend did not work.

In addition to the application for the return of the tenant's personal property and the remainder of his security deposit, the tenant also applied for a \$20,000.00 monetary order for the losses incurred due to the landlords' failure to comply with the *Act*. The tenant listed the items below as part of his monetary claim. Although the tenant indicated a monetary claim of \$20,000.00 on his application, the total monetary claim as indicated below is \$9,994.01, as confirmed in the hearing. The tenant indicated in the hearing that all the items were purchased from the United States, and the currency therefore was USD, which should be taken in consideration.

| <b>Item</b>                         | <b>Amount</b> |
|-------------------------------------|---------------|
| Hotel Stay: December 13-16, 2016    | \$306.66      |
| Hotel Stay: March 16-18, 2017       | 1,032.93      |
| Wheeled Boot Bag (USD)              | 96.12         |
| Boot & Glove Dryer (USD)            | 56.73         |
| Ski Helmet (USD)                    | 154.95        |
| Yoga Ball and Resistance Band (USD) | 54.45         |
| Exercise Balance Board (USD)        | 73.67         |

|   |                   |
|---|-------------------|
| Upright Garment Bag (USD)   | 543.29            |
| LED TV (USD)  | 1,459.18          |
| Clothing (USD)  | 1,277.00          |
| Earrings (USD)  | 1,515.00          |
| Refund of Rent for March 13, 2017-April 14, 2017 (\$16,250.00/6 months) | 2,708.33          |
| Go Pro Camera (USD)   | 323.67            |
| Return of security deposit  | 292.03            |
| Filing Fee  | 100.00            |
| <b>Total Monetary Order Requested</b>                                   | <b>\$9,994.01</b> |

The tenant testified that occupancy during December 2016 and March 2017 is very high due to the ski season, and he mitigated his costs the best he could by obtaining the lowest rate possible for his stays. The tenant testified that on both occasions he had no choice but to find alternative housing. In December of 2016 the pipes froze and burst, and in March 2017 the landlords had changed the locks to the residence.

The tenant indicated that he had claimed for just a few of the items the landlords removed, and never returned. The tenant purchased all these items in the last two years, and he obtained the prices through receipts and credit card statements. The tenant submitted his receipts as part of the written evidence that was excluded for this hearing.

The landlords did not dispute the tenant's testimony that they had changed the locks, and removed his belongings claiming that they had assumed the tenant had abandoned the property. The landlords testified that during a scheduled inspection on March 11, 2017 they discovered the home to be in an extremely unhygienic state with feces in the toilet and garbage inside and outside the property. The landlords and their witness testified that at least 20 bags of garbage were thrown out, and the landlords were concerned that the garbage would attract wild animals and put the property at risk.

The landlords testified that the conditions of the tenancy were communicated to the tenant on September 22, 2016 when all parties signed the tenancy agreement, and the tenant had breached several terms of the tenancy agreement, including condition 9 in the addendum which read: “the tenant agrees not to set the thermostats within the rental property below 12.5 degrees Celsius”, and condition 13 which read “The tenant agrees to not leave any rubbish in the residential property if and when the tenant plans to be away from the residential property for two(2) or more consecutive days”). The landlords testified that the tenant breached several terms of the tenancy agreement, which contributed to the frozen pipes in December, and the potential risk of damage to the home.

The landlords acknowledged that after the washing machine was broken in December of 2016, the landlord did not fix or replace the machine, leaving the tenant without access to a functioning washing machine for the remainder of the tenancy. The landlords also acknowledged that upon a scheduled inspection on March 11, 2017, the landlords discovered what appeared to be an abandoned home full of garbage. The landlords called the police, and changed the locks in fear that the home was being occupied and vandalized by someone unknown to them. The landlords testified that their own items were missing, as well as the tenants’ as listed above. The landlords testified that they attempted to phone the tenant, with no success as the tenant’s voicemail was full.

The landlords testified that they did not see any helmet, garment bag, or earrings as the tenant indicated in his claim below, and dispute being responsible for the loss of those items. The landlords testified that the tenants had left all the windows open and the thermostats turned all the way to the maximum in an effort to raise the hydro bill, which has not been paid by the tenant. The landlords are seeking a monetary claim of \$14,607.74 for the tenant’s failure to pay the hydro bills, as well as for the losses incurred as part of this tenancy such as professional cleaning, and rekeying and changing the locks. The landlords are also seeking compensation for their missing items, as well as replacement of two mattresses, and the washing machine.

| Item  | Amount   |
|---|----------|
| Hydro Bill for period ending March 16, 2017 | \$872.15 |
| Hydro Bill for period ending April 14, 2017 | 785.00   |

|  |                    |
|--|--------------------|
| (estimated)                                  |                    |
| Cost of Re-keying and Changing Locks         | 229.49             |
| Cost of replacing washing machine (estimate) | 2,457.71           |
| Inspection of washing machine                | 99.70              |
| Professional Cleaning                        | 954.19             |
| Professional Laundry of bedding and linens   | 130.50             |
| Value of missing items                       | 6,315.00           |
| Estimate for replacement of two mattresses   | 2,658.00           |
| Filing Fee                                   | 100.00             |
| <b>Total Monetary Order Requested</b>        | <b>\$14,601.74</b> |

The landlords provided the tenancy agreement which states the tenant is responsible for utilities. The landlords testified that in a previous hearing the tenants were found to be in breach of the tenancy agreement, and was ordered to pay the outstanding utilities for this tenancy. Since that order was made, the tenant has accrued an additional \$1,657.15 in unpaid utility bills.

The landlords testified that although no inspection was done at the beginning of the tenancy, the tenant failed to attend the scheduled inspection at the end of the tenancy. The landlords testified that the tenant was given two opportunities to attend, but failed to do so. The landlords testified that many of their personal belongings were missing, which the tenant disputes being responsible for. The landlords provided estimates for replacement of the mattresses and washing machine, which were both over 20 years old, and provided as part of the furnished rental.

### **Analysis**

Section 31 of the *Act* states as follows:

### **Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By changing the locks on March 11, 2017, I find the landlords failed to comply with sections 31 of the *Act*. Although the landlords expressed concern about the state of the home, the landlords did not make an application for an Order of Possession, nor did they issue the tenant a 1 Month Notice to End Tenancy for Cause.

Although the landlords testified that the tenancy ended in accordance with the tenancy agreement on April 14, 2017, and despite the fact that both parties came to a mutual agreement during a hearing held on March 13, 2017, the tenant testified that he was not given access to the rental home by the landlords. He testified that the landlords sent a friend to give him new keys in an envelope, which did not work, and the landlords refused to return his property. On this basis the tenant considered the tenancy to be over as he could not access the home, or his belongings. The landlords dispute the testimony of the tenant, stating that the tenant had abandoned the property before this tenancy was to end on April 14, 2017, and that the tenant was responsible for the utilities up to the end of that period.

The tenant provided sworn testimony during the hearing that he was unable to gain access to the home after the hearing on March 13, 2017. It was undisputed that the landlords had changed the locks on March 11, 2017, and furthermore it was undisputed that the tenant had to break into the home on the evening of March 12, 2017 in order to sleep. It was undisputed that the landlords had removed the tenant's belongings on March 11, 2017, and nothing has been returned to the tenant as of the hearing date. The tenant provided testimony that he stayed in a hotel from March 16 through to March 18, 2017 as he was denied access to the home as the keys given to him by the landlord's friend did not work.

I find that the evidence supports the fact that the tenant was denied access to the home after March 13, 2017 despite the fact that this tenancy was to continue until April 14,



2017. As the tenant's belongings were removed on March 11, 2017, and as the tenant's access was not restored after the landlords had changed the locks, I find that this tenancy ended on March 11, 2017, and not in accordance with the *Act*, regulation, or any agreements.

I accept the tenant's sworn testimony that he had lost his personal belongings and had to find temporary housing after being locked out of the rental unit by the landlords. I find that the landlords breached section 31 of the *Act*, which prohibits the landlords from changing the locks without providing a new set of keys to the tenant. I find that the landlords also breached section 44(1) of the *Act*, which states that proper notice must be given to the tenant in ending this tenancy unless both parties mutually agree to end this tenancy, or unless the tenant vacates or abandons the rental unit. I find that the tenant's belongings were removed by the landlords without his permission or an Order by an Arbitrator, and the tenant's belongings were never returned to him.

I have considered the testimony and submissions of both parties, and I find that the tenant had provided sufficient evidence to support that the landlords failed to fulfill their obligations as required by sections 31 and 44(1) of the *Act* as stated above. From the testimony provided in this hearing, I find that the tenant suffered a monetary loss as a result of the landlord's actions. Accordingly I find the tenant is entitled to a monetary award for the losses incurred due to the landlord's failure to abide by sections 31 and 44(1) of the *Act*.

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 or 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.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. 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 or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be*

*awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

While I have considered the tenant's monetary claim for the missing items, I note that the tenant did not provide any evidence in accordance with Rule 3.14 of the RTB's Rules of Procedure to support what specific items were missing, and the value of the monetary loss claimed by the tenant. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of **\$300.00** for the losses he incurred as a result of the landlords' contravention of the *Act* in ending this tenancy.

As I am unable to determine what if any items the landlords still have, and on this basis I dismiss the tenant's application for the return of his personal property.

The tenant also made a monetary claim for the hotel stays for the periods of December 13 to 16, 2016 and March 16 to 18, 2017, as well as a refund of the rent for the period of March 13, 2017 to April 14, 2017. As it was undisputed that the tenant pre-paid the rent for the entire tenancy until April 14, 2017, and as I found this tenancy ended prior to the end of this tenancy, I find that the tenant is entitled to a refund of the pre-paid rent in the amount of **\$2,708.33** (\$16,250.00/6 months x1 month). I find that as a result of the landlord's failure to comply with the *Act*, the tenant suffered a monetary loss as he had to obtain shelter from March 16 to 18, 2017. I accept the tenant's testimony he had mitigated the costs, and I find that the tenant is entitled to recover the **\$1,032.93** for the three night's hotel stay after not being able to gain access to the rental home despite the mutual agreement before an Arbitrator on March 13, 2017.

It was undisputed that the pipes froze in December of 2016, which the landlords attributed to the tenant's failure to maintain the proper conditions of the home in order to prevent the pipes from freezing. The landlords testified that the water from the washing machine flooded the floor. The landlords testified that the washing machine was at least 20 years old, although in working condition prior to this event. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of a washing machine is 15 years. I find that the washing machine had exceeded its useful life, and I find that the landlords failed to provide sufficient evidence to support that the tenant was responsible for flooding the home. It was undisputed by both parties that the tenant was displaced for the period of December 13 through to 16, 2016 due to this flood, and I find the tenant is entitled to a refund of the rent for this period in the amount of **\$361.11** (\$16,250.00/6 months/30x4 days). The

tenant made a monetary claim for a hotel stay for December 13 to 16, 2016 in the amount of \$306.66. I find that the tenant did not provide sufficient evidence to support that the landlord failed in their obligations in relation to this incident, and accordingly I dismiss the tenant's monetary claim for the hotel stay during this period.

Both parties acknowledged during the hearing that the landlords were still in possession of the remaining \$292.03 from the tenant's security deposit despite an order that was made by Arbitrator on April 19, 2017 for the landlords to retain \$957.97 of the tenant's security deposit. The landlords have not applied to retain the remaining portion of the security deposit, nor has the tenant given permission for the landlords to do so. The landlords testified in the hearing that the tenant extinguished his right to the return of his deposit under section 36(1) of the *Act* by failing to attend the move-out inspection on the two opportunities offered by the landlords. On a similar note, the landlords' right to keep the deposit was extinguished under section 24(2) of the *Act* by not performing a move-in inspection. On this basis, I order that the landlords return the remaining **\$292.03** to the tenant.

Section 37(2) of the *Act* states that "when a tenant vacates a rental unit, the tenant must a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property". By ending this tenancy and moving the tenant's belongings without proper notice, and without the tenant's written agreement to do so, or without an Order from an Arbitrator, I find that the landlord impeded the ability of the tenant to fulfill his obligations of section 37 of the *Act*. On this basis, I dismiss the landlords' monetary claim against the tenant for the cost of re-keying and changing locks, as well as the cost of cleaning.

The landlords applied for monetary compensation for the broken washing machine as well as two mattresses. The washing machine was at approximately 20 years old, while the mattresses were approximately 10 and 20 years old. As per the useful life policy, all these items exceeded their useful life spans. Furthermore, without a move-in inspection, and in the absence of a condition inspection report for the beginning of this tenancy, I find that there is no way to determine what damages had occurred during this tenancy, and what the pre-existing condition of these items was. Furthermore, the landlords did not dispute that the tenant did not have access to a functioning washing machine since it stopped functioning in December 2016, which was included in the rent as part of the tenancy agreement. Accordingly, I dismiss the landlord's monetary claim in relation to the mattresses and washing machine.

The landlords also made a monetary claim for \$6,315.00 for items that the landlords testified were missing. The landlords, in their written evidence, stated that the police were notified of these missing items, and several items were “returned”. The tenant disputes the landlords’ claims that he was responsible. Although I accept the testimony of the landlords that items were missing from the home, I find that the landlords did not provide sufficient supporting evidence to establish that the tenant was responsible for theft or destruction of these items. Accordingly, this portion of the landlords’ application is dismissed.

Lastly the landlords made a monetary claim for the hydro bill for the period ending March 16, 2017, as well as for the period ending April 14, 2017. As I find the tenancy ended in March, and not April 2017, I dismiss the landlords’ monetary claim for the hydro bill ending April 14, 2017. I find that the tenant was responsible for the hydro bill during this tenancy, which the tenant did not dispute. Accordingly I find that the landlords are entitled to **\$872.15** for the period ending in March 2017.

As both parties made an application to recover the filing fee, and as both parties were partially successful in their claims, both the landlords and tenant’s applications to recover the filing fee are dismissed.

### **Conclusion**

The tenant’s application for the landlord to return his items is dismissed. I issue a monetary order in the tenant’s favour in the amount of \$3,822.25 as set out in the table below:

| <b>Item</b>   | <b>Amount</b>     |
|---|-------------------|
| Nominal Damages for Landlords’ failure to comply with sections 31 & 44(1) of the <i>Act</i> | \$300.00          |
| Return of the pre-paid rent for the period of December 13-16, 2016                          | 361.11            |
| Return of the pre-paid rent for the period of March 13-April 14, 2017                       | 2,708.33          |
| Hotel Costs for March 16-18, 2017   | 1,032.93          |
| Return of Security Deposit  | 292.03            |
| Unpaid Hydro Bill up to March 2017  | -872.15           |
| <b>Total Monetary Order</b>   | <b>\$3,822.25</b> |

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the applications are dismissed.

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: September 22, 2017

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Residential Tenancy Branch