



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

The landlord's application was a request for a monetary order for \$3900.00, and a request that the respondents bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution; however at the hearing the landlord reduced the claim to \$1150.00 plus the \$50 filing fee.

The tenant's application is a request for a monetary order for \$5,000.00.

As these applications are interrelated I have dealt with both applications together.

## Background and Evidence

The landlord testified that:

- The tenants had agreed to rent the dispute property for \$1300.00 per month with the tenancy beginning April 1, 2010.
- The tenants paid a security deposit of \$650.00, a pet deposit of \$650.00, and a move-in fee of \$150.00, for a total of \$1450.00.
- When the previous tenants moved out they did not do a proper cleanup of the rental unit and as a result the rental unit was not ready for these tenants on the first of the month however she got a cleaning and repair crew in immediately and the unit was ready by April 2, 2010.
- She had informed the tenants that she would be getting the unit ready as soon as possible however she did not hear from the tenants again until April 6 when she received a letter from the tenants stating that they no longer wanted to rent the unit, citing loss of quiet enjoyment due to bird recordings that were being broadcast to scare off woodpeckers, as the main reason for not renting the unit.
- Although she is now aware of the recordings, she was not aware of the bird recordings when she rented the unit to the tenants.
- Once she received the letter she immediately started trying to re-rent the unit and was able to re-rent the unit for June 1, 2010, and therefore the landlord has lost two months' rent.

The landlord is therefore requesting a reduced order as follows:

Lost rental revenue for April 2010	\$1300.00
Lost rental revenue for May 2010	\$1300.00
Filing fee	\$50.00
Minus security deposit held	-\$650.00
Minus pet deposit held	-\$650.00

Minus move-in fee held	-\$150.00
Total	\$1200.00

The tenants testified that:

- They did agree to rent the dispute property for \$1300.00 per month and paid a \$650.00 security deposit, \$650.00 pet deposit, and the \$150.00 move-in fee.
- When they went to do the move in inspection with the landlord they found the rental unit was not ready to move into and needed substantial cleaning and maintenance.
- The building manager informed them that the unit would unlikely be ready to move into until April 7, 2010.
- While in the rental unit they also noticed some loud bird sounds coming from outside the rental unit and subsequently were informed by the building manager that these were bird recordings that were being played through speakers on the building to scare off woodpeckers.
- These bird recordings were so loud, that they were a major interference to the quiet enjoyment of the rental property.
- Since unit was not ready to move into and they had been informed it would not be ready until April 7, and since the loud bird recordings interfered with their quiet enjoyment of the rental unit, they decided not to move into the rental unit and sent the letter referred to by the landlord as they believed that the landlord had breached material terms of the tenancy agreement.
- As a result of not being able to move into the rental unit they had to find alternate accommodation and storage space for their belongings, they also had extra power hook-up fees, they forfeited a \$600.00 delivery and unpacking service fee they had paid to their movers, and they had to spend approximately 20 hours doing research for the dispute resolution hearing.

- They are however reducing their claim because they did not have to pay anything further for moving and unpacking, and the actual hook-up costs for their power was \$40.67 and not \$60.00.

The tenants are therefore requesting a reduced order as follows:

Return of full security deposit	\$650.00
Return of full pet deposit	\$650.00
Return of full move-in fee	\$150.00
Lost moving, delivery and unpacking fee	\$600.00
Power hook-up fee	\$40.67
April 2010 rent in alternate premises	\$800.00
May 2010 rent in alternate premises	\$800.00
Storage fees for April 2010	\$120.00
Storage fees for May 2010	\$120.00
20 hours of documentation/research	\$400.00
Filing fee	\$50.00
Total	\$4380.67

## Analysis

It is my finding that the landlord has failed to provide the tenants with the quiet enjoyment of the rental unit as required under the tenancy agreement and the Residential Tenancy Act.

I accept the tenant's testimony that the bird recordings were loud enough to be a major disturbance to their peace and quiet, and although the landlord may not have been aware of the recordings at the time she rented the unit to the tenants, the tenants still had the right to quiet enjoyment of the rental property.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The right to quiet enjoyment of the rental property is a material term of the tenancy agreement and therefore since that term was breached the tenants did have the right to end the tenancy and they are not liable for the landlords lost rental income.

Therefore I will allow the following portion of the tenant's claims:

Return of full security deposit	\$650.00
Return of full pet deposit	\$650.00
Return of full move-in fee	\$150.00
Power hook-up fee	\$40.67
Filing fee	\$50.00
Total	\$1540.67

I will not allow the claim for the loss of the delivery and unpacking service fee, because the applicants have provided no evidence to show that a separate fee was paid for that service.

I will not allow the claims for April 2010 or May 2010 rent, and storage fees because although these were costs incurred as a result of having to find new accommodations, they have not had to pay rent at the dispute property as well, and therefore there is no actual loss to the tenants.

I will not allow the claim for 20 hours of documentation/research, as this is a cost of the dispute resolution process and I have no authority to award costs other than the filing fee.



# Dispute Resolution Services

Page: 6

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Conclusion

### Landlords claim

The landlords claim is dismissed in full without leave to reapply.

### Tenants claim

I have allowed \$1540.67 of the tenants claim and have issued an order for the landlords to pay that sum to the tenants. The remainder of the tenants claim 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: August 12, 2010.

---

Dispute Resolution Officer