



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, RPP, AAT

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for damage or loss under the Act or tenancy agreement, an order for the Landlord to return the Tenants' personal property and to allow access to the rental unit for the Tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Are the Tenants entitled to a monetary order?

Are the Tenants entitled to orders against the Landlord for return of personal property or for access to the rental unit?

### Background and Evidence

At the outset of the hearing the Tenants explained they had made a mistake in requesting a monetary order in the amount of \$14,500.00. They intended to have a request for a monetary order of \$4,500.00, and therefore, this is the amount claimed. The Tenants claim the \$4,500.00 for loss of, or damage to, their personal property.

The Tenants testified that they received a one month Notice to End Tenancy for cause, on July 28, 2010. The Tenants did not formally dispute the Notice as they willing to move, although they testified that they did not agree with the allegations in the Notice.

Nevertheless, the Tenants agreed to vacate the rental unit before the end of August 2010.

The Tenants asked the Landlords about the rent cheque for September of 2010, which was being sent by a third party directly to the Landlords. The Landlords informed the Tenants that the cheque would be returned to the third party. When the Tenants later made enquiries with the third party they found that the Landlords had not returned the money, and had cashed and kept the September rent of \$316.66. In support of this, one of the Tenants provided a cheque stub from the third party for September rent.

The Tenants testified that around the middle of August the Landlords had asked them to vacate the rental unit as soon as possible, as the Landlords wanted to move into the rental unit. In August the Landlords also served the Tenants with a 10 day Notice to End Tenancy for unpaid August rent. The Tenants vacated the rental unit on August 22, 2010, although they left personal property outside of the rental unit.

When the Tenants returned to the rental unit to retrieve their personal property, they claim the Landlords had changed the padlock on the gate allowing access to the rental unit area where their property was stored. One of the Tenants testified he has returned to the rental unit several times to retrieve the property, however, he has not been able to gain access. The Tenants also say the Landlord had changed the locks during the tenancy and they often had to enter or exit the rental unit through a window.

In reply the Landlords testified that the Tenants were issued the one month Notice to End Tenancy because they had too many occupants in the rental unit and they were breaching the no smoking portion of the tenancy agreement. They testified that the Tenants were often late paying the rent and had more and more people coming over.

The Landlords also testified that one of the Tenants, or one of their guests, had removed empty bottles which belonged to the Landlords and cashed them in for their refund. The Landlords did not give permission for this, neither were they given the refund for the bottle deposits.

The Landlords allege that every time they wanted to discuss these issues with the Tenants they replied with aggressive and foul language.

The Landlords allege the Tenants lost the key to the padlock on the gate and the rental unit and did not request replacements.

The Landlords testified that they had taken time off work to meet the Tenant who wanted to remove his personal property, however, this Tenant did not show up. They say they had made arrangements with the Tenants several times to have them remove the personal property, however, one of the Tenants would show up but not move the property as he had no truck.

The Landlords acknowledge they kept the September rent as they allege the Tenants had left the rental unit dirty and did not pay all of the August rent due. They paid one of the Tenants back his security deposit, which he had informed them he would use to hire a truck. On the day he had hired the truck he was unable to gain access to his personal property as he had no keys. The other Tenant agreed he did not request the return of his security deposit.

Lastly, one of the Tenants testified that he had been able to remove some of his property and estimated the value of the property still at the rental unit to be approximately \$2,500.00, although he could not be certain if any of the property was damaged.

I note that the Landlords did not supply any documentary evidence. The only documentary evidence supplied by the Tenants was the cheque stub for the September rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Landlords have breached the Act by keeping rent money for September, when the Tenants had vacated the rental unit in August.

In order to claim for alleged rent due for August of 2010, or for alleged damage or lack of cleaning of the rental unit, the Landlords must make their own Application. Therefore, I order the Landlords to pay the Tenants **\$316.66**, and grant a monetary order in those terms. This order is enforceable in the Provincial Court.

I also order the Landlords to allow the Tenants access to the rental unit to remove their personal property. The Landlords and the Tenants shall agree on a mutually convenient date and time for the Tenants to remove this property. The parties should make these arrangements during a phone call between them.

If the Tenants do not remove their property at the mutually agreed upon time and date, then the Landlords must deal with the Tenants' personal property in accordance with the abandoned property provisions of the regulation to the Act. The Landlords may call the branch for further information about how to deal with abandoned property if the Tenants do not attend at the unit to remove these items.

Lastly, since the Tenants have insufficient evidence on the value of, or damage to, their personal property, I dismiss this portion of their claim with leave to reapply.

Furthermore, if the Landlords do not allow the Tenants access to the personal property at the mutually agreed upon time and date, the Tenants may also reapply for a monetary order.

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: October 13, 2010.

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Dispute Resolution Officer