



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNR, MNDC, RPP, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord is seeking a monetary order. The tenants seek a monetary order and an order to have personal items returned to the tenants.

The hearing was conducted via teleconference and was attended by two agents representing the landlord and the two tenants.

The first hearing on this matter was convened on October 8, 2010 at which time the landlord and myself noted that we had no evidence from the tenants. The parties agreed to an adjournment and I ordered the tenants to serve the landlord and the Residential Tenancy Branch (RTB) immediately with their evidence.

The tenants failed to follow this order for service and submitted evidence to the RTB October 19, 2010. The landlord's agent testified that she received the tenant's evidence from the tenants personally at 10:00 p.m. on October 19, 2010. The tenant's contend they served the landlord on October 18, 2010 at 10:00 p.m.

Despite the disregard for my order to serve the evidence immediately and despite the late service to the RTB and potentially to the landlord, I will accept and consider the tenants evidence as submitted.

From the time of the original hearing the tenants also amended their application to change from a \$5,000.00 monetary claim to an amount of \$6,629.17. The landlord's agent acknowledged in the hearing that he had received the tenants' amended application.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and to an order that the landlord return the tenants' personal property, pursuant to Sections 67, and 72 of the *Act*.

### Background and Evidence

The parties agree that on June 25, 2010 the tenants were served with a 1 Month Notice to End Tenancy for End of Employment with an effective date of July 31, 2010. The unwritten tenancy arrangement previously held that the original monthly rent on the rental unit was \$600.00 but that as a result of the female tenant being employed by the landlord both tenants received a reduced rent in the amount of \$500.00 per month.

The landlord confirms that when they issued the Notice to End Tenancy the tenants were allowed to remain in the rental unit but originally indicated rent would be in the amount of \$975.00 based on current market value. The landlords have since reduced their expectation to \$900.00.

The parties also agree that the tenants have not paid rent in any amount for the months of July, August, September and October 2010. The tenants testified that they offered to pay the landlord rent but the landlord refused. The landlord testified that the tenants had offered to pay rent in the amount of \$600.00 on the condition the landlord signed the cheque indicating it was the current rent.

The landlord also contends that as result of ending the female tenant's employment the landlord required the tenants to return the master key for the complex; that the tenants failed to do so; and as a result the landlord had to rekey all of the rental units on the residential property.

The tenants testified that they did not return the keys to the landlord as the landlord owed them money related to employment and that after the landlord paid the amount owed the landlord did not come back to get the keys.

The landlord seeks compensation for rent in the amount of \$500.00 for July 2010 and for \$2,700.00 for August, September, and October 2010 for a total rent of \$3,200.00. The landlord also seeks compensation for rekeying of the residential property in the amount \$1,201.50 as confirmed by the landlord's submission of the purchase order from his locksmith.

The landlord submitted email correspondence between the tenant and the landlord's agents dating from June 22, 2010 to July 25, 2010. The correspondence indicates the landlord's attempts to inform the tenants of the new rent amount resulting from the end of the tenancy resulting from the 1 Month Notice to End Tenancy for End of Employment. At no point in any of the correspondence does the tenant object to the amount of rent proposed by the landlord

The correspondence also includes the tenants' responses to the landlord's attempts to retrieve the master keys to the residential property as well as a cell phone supplied to the tenant for her work with the landlord. The tenants indicate they will return these items when they have been paid for outstanding amounts from the employment arrangement with the landlord.

The tenants allege the landlords removed articles from one of many of their storage units. The tenants have provided a list of items missing and approximate value as determined by the tenant "off net" as follows:

Description	Amount
Miscellaneous Hand Tools and Drywall and Paint tools	\$3,602.70
36 – 8 track tapes	\$432.00
2 – car tents	\$234.00
Box of coil nails for air gun	\$45.90
2 - Bow tree saws	\$69.98
Fish tank canister filter	\$179.99
Ski Rack	\$149.99
Battery charger	\$159.14
Air hockey table	\$589.00
Antique tea set	\$350.00
Hot tub pump	\$326.50
Gas weed eater	\$189.00
Welder's Mask	\$50.97
2 boxes of wood carvings and hand-blown glass	\$250.00
<b>Total</b>	<b>\$6,629.17</b>

The female tenant testified that she was aware the landlord had intended to clear out and clean the underground parking areas when she was still employed by the landlord. She stated she thought it was to be the removal of several fridges only.

The tenants contend that on July 8, 2010 the landlord removed personal belongings that they had in storage in two areas of the underground parking area. One area was an open area that held their air hockey table, some wood and a washing machine and another area that the tenants contend was a room with a locking door. The landlord contends that this is not a room but an alcove and there is no door on the space.

The tenants have provided photographs of the area dated July 8, 2010 and in their written submission the tenants state that they checked the areas on July 7, 2010 and that at that time the air hockey table; wood and washing machine were gone but the storage room/alcove was still intact.

The tenants go on in their written statement to say that they did not check the room/alcove again until July 9, 2010, at which point all the items were removed and the area had been swept clean. The landlord testified that prior to removal of any items

from the common area the landlord check with the male tenant who indicated the air hockey table was not his. The male tenant denies the landlord asked him anything.

The parties agreed the landlord returned to the monitors to the tenants and the landlord acknowledges that they dispute the tenant's list for lost items with the exception of the fish tank filter, roof racks, battery charger, air hockey table and two monitors.

### Analysis

To be successful in a claim for loss or damages the party making the claim must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That that loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of that damage or loss; and
4. Steps taken if any to mitigate the damage or loss.

As to the landlord's claim regarding the payment of rent. I am satisfied the tenants have not paid any rent since July 1, 2010 in direct contravention of Section 26 of the *Act*, that requires a tenant to pay rent when it is due under the tenancy agreement, regardless of any disputes with the landlord.

As the 1 Month Notice to End Tenancy for End of Employment did not take effect until July 31, 2010 it is clear the tenant's owe \$500.00 for rent for the month of July 2010. As to the remaining months, after the end of the employment related tenancy in the landlord's claim I find the landlord has established that he was willing to enter a new tenancy with the tenants effective August 1, 2010 for rent in the amount of \$900.00.

I am not persuaded by the tenants' position that the male tenant did not work for the landlord and therefore the change in rent constitutes a rent increase and should follow Part 3 of the *Act* regarding rent increases. I accept the landlord's position that a new tenancy began on August 1, 2010, in part, by the tenant's failure to vacate the rental unit at the end of the tenancy.

In relation to the landlord's claim for the expenses in rekeying the rental unit, I accept the landlord attempted to have the master key returned by the tenants and I find that the tenants' actions in using the master key as "ransom" for payment of employment related monies put the landlord in a position that endangered their responsibilities under the *Act* to ensure the security and privacy of the other tenants in the complex.

I therefore find the landlord had no alternative but to have the complex rekeyed. I find the landlord has established the value of this loss, in the amount of \$1,201.50, through the submission of the purchase order from the locksmith.

As to the tenants' claim for return of personal property and for compensation for items not returned I accept that the landlord removed items from these areas in the underground parking for the complex, however, I also accept that the landlord attempted to determine if the items belonged to the tenants.

As the tenants identified that these items were not theirs, I find the landlord cannot be held responsible to replace these items when the tenant denied they belonged to them. Further to items the tenants state were in a locked storage room in the underground parking, from the photographic evidence submitted I find that this was not a secured area, primarily because the photographs clearly show that there is no door frame around the opening to the alcove.

As noted above I accept the landlord removed some of these items but because I have found that the area was not a secured storage area and the tenants have failed to provide any evidence that all of these items were removed by the landlord they have not established that the landlord has breached the *Act*, regulation or tenancy agreement.

In addition, the tenants have provided no documentation other than the photographs to substantiate the items listed in their claim. The photographs themselves show plastic bins and baskets and several items piled in an unruly manner and provide no corroboration of the items listed and therefore the tenants have failed to establish a loss.

Further, the tenants have provided no documentation as to how they determined the value of their alleged loss other than obtaining estimates for replacement values off of the internet. For example, the tenants list, among other things, "Totes full of misc. hand tools 4-5 diff type wrenches/screwdrivers/hammers/measure tapes/socket sets/etc. Tote of drywall & paint tools – putty knives/roller sleeves/brushes/trowels/drop sheets/spinner's/etc." for a value of \$3,602.70.

The tenants provided no confirmation of what websites were used to determine these values; they have not even indicated brand names or specific types of tools or numbers of them to assist with the determination of the value.

I also find that the tenants failed to mitigate any losses by denying the items belonged to them prior to the landlord's removal of these items and as such, I find the tenants have failed to provide sufficient evidence to establish they suffered a loss; that a loss resulted from a violation of the *Act*, regulation or tenancy agreement; establish the value of any potential loss; or that they did everything reasonable to mitigate any potential loss. I therefore dismiss the tenant's application in its entirety.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4451.50** comprised of \$3,200.00 rent owed;

\$1,201.50 for compensation for rekeying and the \$50.00 fee paid by the landlord for this application.

I note the landlord has established that the rent for the rental unit is set at \$900.00 and order the tenants must pay that amount to the landlord when rent is due. I note also that the landlord remains at liberty to issue a notice to end tenancy should the tenants fail to pay the full rent when it is due.

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 26, 2010.

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Dispute Resolution Officer