



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened upon joint applications filed by the tenant and the landlord.

The tenant seeks:

1. Recovery of the security deposit; and
2. Recovery of the filing fee paid for this application.

In total the tenant's application seeks \$850.00 plus the filing fee.

The landlord seeks:

1. A monetary order for damage;
2. An Order to be allowed to retain the security deposit;
3. A monetary order for compensation for damage or loss; and
4. Recovery of the filing fee paid for this application.

In total the landlord's application seeks \$2,255.00 plus the filing fee.

### Issue(s) to be Decided

Is either party entitled to the Orders sought?

### Background and Evidence

The evidence is that this tenancy ended on or about June 30, 2010. The tenant testified that he sent his notice intending to end the tenancy at the end of June to the landlord on May 25, 2010 by way of registered mail. The tenant did not supply a copy of the letter he sent nor particulars of the date the registered mail was sent. The tenant testified that he also emailed the landlord on May 31, 2010 to provide notice. The landlord acknowledged receiving the email notice on May 31, 2010 and says the registered mail notice was not received until mid-June 2010.

The tenant testified that on July 8, 2010 he emailed his forwarding address to the landlord and the landlord acknowledges receiving the tenants forwarding address on July 12, 2010.

The landlord testified that he sent a cheque to the tenants on September 30, 2010 for the full amount of the \$850.00 security deposit and accrued interest of \$1.64. The landlord testified that he was unaware of the provisions of the Tenancy Act requiring him to make application to retain the security deposit, once he became aware he returned the deposit and made this application to recover the costs of loss of rent and damages.

With respect to the loss of rent claim, while the landlord admits receipt of the email notice on May 31, 2010, the landlord says he did not receive the tenant's registered mail letter until mid-June. The landlord says he is now claiming \$1,700.00 rent for June 2010. In his written submission the landlord says

The tenant abandoned the premises; he sent a notice via e-mail on 31 of May. We were vacationing and do not use this form of communication of a regular basis and if it is sent this way it must be sent 5 days in advance.

The landlord says the tenants did not participate in the move-out inspection. The landlord did not produce a move-out inspection report at the hearing saying he did not realize it would be of any use as it was not signed by the tenant. The landlord produced an addendum to the tenancy agreement which the parties agree they signed. The landlord notes that the rental unit was "No smoking in house, garage or shop" and "Yard to be maintained by tenant on a regular basis. "Yard to be kept clean, tidy and clear of refuse. Example: mowing lawn, removing garbage".

The landlord says that despite the agreements the tenants did not maintain the yard, mow the lawn, clean up their garbage and they smoked in the rental unit. The landlord testified that when they vacated the lawn was 18" high. The landlord provided an invoice dated July 7, 2010 for 13 hours of yard work "...lawns & overgrown flower beds etc.", 3 hours of "...cleaning out & bleaching garage" and "Dump disposal fees" and dump disposal fees totalling \$582.40 with HST. The landlord also submitted an invoice from another company dated July 10, 2010 for "2 mowings and weeding" (*reproduced as written*) in the sum of \$168.00. The landlord testified that the garage had to be bleached because it smelled of smoke. The landlord testified that the cleaners found a bag of marijuana and some marijuana cigarettes in the rental unit and they attributed this to the smoke smell.

The tenant disagrees that they smoked anywhere in the rental unit. The tenant testified that he mowed the lawn just a few days before they vacated on June 30, 2010. The tenant testified that they left no garbage behind whatsoever. The tenant submitted that when they moved in they took the possession of the rental unit from the previous

tenants, not from the landlord and it may have been their goods that we left behind in the shop.

Further, the landlord claims the costs of repairing the sliding mechanism under the French doors. The landlord submitted an invoice in the sum of 229.50 for this work.

The tenant agrees that the sliding door mechanism needed replacing and says that it needed replacing the day they moved in years ago. Over the term of the tenancy the mechanism became worse but the tenant submits he should not be responsible.

## Analysis

With respect to the tenant's claim for recovery of his security deposit Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

This tenancy ended June 30, 2010. The landlord acknowledges receiving the tenant's forwarding address on July 12, 2010. The landlord did not make application seeking to retain the deposit until September 28, 2010. I therefore find that the landlord did not return the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to double the deposit in the amount of \$1,700.00. However, the parties agree that the landlord did return the deposit and accrued interest of \$851.64 on September 28, 2010. I will therefore deduct that sum from the \$1,700.00 leaving a balance owing by the landlord to the tenant of \$848.36.

As the tenant has been successful in his application I find that he is also entitled to recovery the filing fee paid for this application. The total amount of monetary award in favour of the tenant is therefore \$898.36.

With respect to the landlord's claims, the landlord has testified at the hearing of this matter and in his written submissions that he received the tenant's notice to vacate by email on May 31, 2010 advising that he would vacate June 30, 2010. The landlord submits that a notice must be mailed 5 days in advance and an email notice is not sufficient.

In a month-to-month tenancy such as this, a tenant is required to give one full months' notice of his/her intention to vacate, the landlord acknowledges that he received that notice on May 31, 2010. Because email can go astray it is not the preferable method for notice to end a tenancy to be given by a tenant to a landlord, however, in this case the landlord acknowledges receiving the email on May 31, 2010, and I am therefore satisfied that the landlord had proper notice that the tenant intended to end the tenancy June 30, 2010. I therefore dismiss the landlord's claim for loss of rent for the month of July 2010 in the sum of \$1,700.00.

With respect to the landlord's claims for clean up, yard work and repairs, the landlord bears the burden of proving these claims. The tenant denies that he left the yard in need of mowing or clean-up. He also denies that he left goods behind that needed to be taken to the dump. The tenant submits that any goods left behind could have been the property of the previous tenants.

In this regard, other than invoices for yard clean up the landlord has submitted no documentary evidence such as photographs or a move-out Condition Inspection Report to demonstrate the condition of the premises at either move-in or move-out. Further I find that the invoices submitted are questionable. The first one is dated July 7, 2010 for \$582.40 for "lawns & overgrown flower beds" the other dated July 12, 2010 for \$168.00 for "... mowing and weed-eating". The landlord has failed to detail what these invoices were for however they appear to be for substantially the same work performed within 5 days of each other. Further, while the first invoice indicates the work was done at the rental property, the second invoices shows no location for the work done at all. Overall I am not satisfied that the landlord has shown that the work was done at the rental property, that it was required or that the tenant should be responsible for the costs. I therefore dismiss the landlord's claims for yard work.

Finally, with respect to the French door. The parties agree the door was in disrepair when this tenancy began. Left unrepaired it likely became worse over the course of this tenancy. If the landlord had the door repaired at the start of this tenancy the cost of these repairs may not have been so high. I find that the evidence shows that the landlord chose not make repairs when they were required and the condition of the French doors worsened as a result. This is not the fault of the tenants and I therefore dismiss this claim as well.

As the landlord has been unsuccessful in his claims his claim to recover the filing fee is also dismissed.

The tenant is provided with a monetary Order in the sum of \$898.36. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to



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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.