



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD MNDC FF  
                             MNSD RPP FF

### Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Agent confirmed she wished to amend their application to request money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord had indicated these requests in the notes written in the details of the dispute; therefore the Tenants were made aware of the Landlord's request in the initial application and would not be prejudiced by the Agent's request to amend the application.

After reviewing the Tenants' application for dispute resolution, at the onset of the hearing, the Tenant confirmed they wished to amend their application to request the return of their personal property.

The Tenants had indicated these requests in the notes written in the details of the dispute; therefore the Landlord was made aware of the Tenants' request in the initial application and would not be prejudiced by the Tenants' request to amend the application.

Based on the aforementioned I approve the Agent and Tenants' request to amend their applications as stated above, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing convened on February 17, 2011, and again for the present session on March 17, 2011. This decision should be read in conjunction with my interim decision of February 18, 2011.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 20, 2010. The Tenants confirmed receipt of the hearing documents from the Landlord.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Agent on approximately February 12, 2011. The Agent confirmed receipt of the hearing documents from the Tenants.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

#### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?
5. Have the Tenants met the burden of proof to obtain an Order to have the Landlord return their personal property?

#### Background and Evidence

I heard undisputed testimony that the parties entered into a month to month written tenancy agreement effective May 1, 2006. Rent was payable on the first of each month in the amount of \$985.15. On approximately April 28, 2006 the Tenants paid the Landlord \$475.00 as the security deposit. The parties wrote some form of a move in inspection of the back of the tenancy agreement, however did not provide a copy into evidence. No move out inspection was completed.

The Tenants testified that they provided the Landlord with written notice to end their tenancy on August 31, 2010 when they left a letter at the Agent's office. They then called the Agent a few days later to advise a letter to end their tenancy had been dropped off and they were ending their tenancy effective September 30, 2010. They

state they first provided the Agent with their forwarding address on the phone and later provided it in writing to the Agent's office during the second week of October 2010.

The Tenants confirmed they had an agreement with the new tenants that they could move their stuff in early and in exchange they could leave their boat in the driveway for a few days until the person who purchased the boat could come by and pick it up on approximately October 2, 2010. They never had a discussion with the Landlord or Agent about leaving the boat in the driveway and were surprised to hear the boat was gone when their friend came by to pick it up. They called the Landlord and left messages to find the boat however the Landlord did not return their calls. They had sold this boat to their long time family friend but at the time he came to pick up the boat the money had not changed hands and no agreement of purchase or sale had been written. When clarifying the applications at the outset of the hearing the female Tenant stated that they were not wanting the boat returned and are seeking monetary compensation for the loss of the sale of the boat.

They feel they are entitled to receive the return of their security deposit because they let the new tenants move in early and worked with them to clean the unit. They had arranged to have a professional steam cleaner come in but when he arrived he could not clean the carpets because there was too much stuff in the house. The Tenants provided photographs that were taken the morning of September 29, 2010 which display the new tenants' possessions inside the rental unit. They did rent a steam cleaner to clean their furniture and used it on the carpets but it did not clean them very well.

The Agent testified that she did not receive any notice to end their tenancy in writing; rather she received a telephone call from the male Tenant on September 4<sup>th</sup> or 5<sup>th</sup>, 2010, advising her that they were moving out at the end of September. She told him that it was too late to provide notice and they would have to stay until October 31, 2010. The Agent agreed to allow the male Tenant to find new tenants providing the Agent could interview them and approve them. The Tenants were able to find new tenants that she approved of and they are the current tenants. It was the Tenants who arranged between themselves to allow the new tenants to move in early and she believes they moved in September 28, 2010. The Landlord confirms receiving the Tenants forwarding address during the second week of October 2010. The Landlord did not provide the Tenants with two opportunities to conduct the move out inspection and did not serve them with a final notice of inspection.

The Agent stated she was told by the new tenants that garbage and the boat were left behind by the Tenants. Then on October 2, 2010 the Landlord was told the larger items

like the trampoline were picked up by the Tenants however there was still garbage and the boat in the driveway. The Landlord hired her friend to haul the debris and boat away. She confirmed she did not have a conversation with the Tenants about their intentions of removing the boat prior to having her friend pick it up. The boat is currently being stored at her friend's scrap metal yard.

The Agent is seeking reimbursement of \$156.80 for having the carpets cleaned as supported by the invoice she provided in her evidence dated October 3, 2010. She advised the entire upstairs was carpet and the main floor was all laminate and the photos provided by the Tenants show the new tenant's possessions in the lower level. There were some rat feces on the carpet so the carpet cleaner recommended they treat the carpet while it was being cleaned and was included in his invoice.

The Agent has sought \$315.00 for cleaning of the rental unit and patching walls. She referred to a hand written invoice provided in her evidence and confirmed this invoice is from the new tenants who completed the work. The invoice is dated October 20, 2010.

The Agent is claiming \$90.00 for the removal of junk left at the rental unit as supported by the invoice dated October 5, 2010. After a brief discussion the Agent stated that she had nothing to do with the Tenants making the arrangements with the new tenants to move in September 28, 2010. This agreement was between them. She confirmed she did not conduct a move out inspection with the Tenants and made no arrangements to do so.

In closing, the Tenant argued that their pet rat was deceased since May 2010 and they would not leave feces or urine on the carpets for that length of time. In addition their rat was never allowed up in the bedrooms so there was no reason to have the carpets treated.

### Analysis

I have carefully considered all of the testimony and evidence before me.

### **Landlord's application**

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, which includes having the carpets steam cleaned. The Tenants may have cleaned the carpets with the rented cleaner but by their own testimony it did not clean the carpets that well. A charge of \$156.80 to clean three bedrooms and adjoining areas is not unreasonable. Therefore I find the Landlord has met the burden of proof, as listed above and I approve their claim of **\$156.80**.

The evidence supports no move out inspection was completed and the Tenants handled the move-out and move-in of the new tenants. Section 36(2) of the Act provides that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not comply with section 35(2) and complete the move-out inspection report. The remainder of the Landlord's claim pertains to expenses for cleaning, repairs, and junk removal which all occurred after the Tenants vacated the property on September 29, 2010 and the new tenants took possession of the unit. Therefore I find there to be insufficient evidence to support these costs were solely the result of the Tenants actions or neglect. Based on the aforementioned I find the Landlord has provided insufficient evidence to meet the burden of proof and I hereby dismiss their claim of \$405.00 (\$240 + 90 + 75) without leave to reapply.

The Landlord has been partially successful with their application; therefore I award recovery of the filing fee in the amount of **\$25.00**.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

|  |                  |
|--|------------------|
| Carpet cleaning  | \$156.80         |
| Filing fee   | 25.00            |
| Subtotal (Monetary Order in favor of the landlord)         | <b>\$181.80</b>  |
| Less Security Deposit of \$475.00 plus interest of \$16.03 | - 491.03         |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b>             | <b>\$ 309.23</b> |

### Tenants' application

Part 5 of the Regulation provides that a Landlord may consider property as "abandoned personal property" only if (a) the tenant leaves the property on residential property that he or she has vacated after the tenancy agreement has ended, **and** (b) the property is left for a continuous period of one month, **and** (2) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property to retrieve their possessions.

The evidence supports the Landlord removed the Tenants' boat on or about October 5, 2010, less than one month after the tenancy ended and without express oral or written notice from the Tenants of their intentions to remove the boat, in breach of Part 5 of the Regulation. The boat is currently being stored by the Landlord's friend.

A significant factor in my decision is the consideration of the written statement provided by the Tenants' Witness. I am required to consider the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Tenants' Witness' evidence was coloured by the fact that he is their close, long term family friend. I also note that at the outset of the hearing when we were reviewing the Tenants' application about their personal property, the female Tenant originally stated that she did not want the boat returned because the sale had fallen through, so they were seeking monetary compensation.

Based on the aforementioned, I do not accept the Tenants' testimony or evidence which indicates the boat was sold. In order to substantiate a contract for sale there must be capacity, consensus, and consideration. In this case there was capacity to enter into an agreement and there was an alleged verbal agreement. There was however, no written agreement to purchase or sell the boat and no consideration or payment was made to secure the contract. Therefore I dismiss the Tenants' claim of \$600.00, without leave to reapply.

Having found above that the Agent breached the Regulations when she removed the boat, she is hereby ordered to return it to the Tenants at their new address, at her cost,

pursuant to section 65 (1)(e), on a date and time that is mutually agreed upon between the parties. Any costs incurred for storage or delivery of the boat is the responsibility of the Landlord.

That being said, in light of the Tenant's previous comment about not wanting the boat returned, the parties are at liberty to enter into a written mutual agreement if they wish to dispose of the boat.

The Tenants are entitled to the return of the balance of their security deposit and interest of **\$309.23**, as noted above.

The Tenants have been partially successful with their application therefore I award them recovery of **\$25.00** from their filing fee.

#### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$334.23** (\$309.23 + 25.00). The Order must be served on the Landlord and is enforceable through the Provincial Court as an Order of that Court.

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: March 17, 2011.

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Residential Tenancy Branch