



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: MNSD, FF  
Tenant: MNDC, MNSD, OLC, RPP

### **Introduction**

This hearing was convened by way of conference call on June 2, 2011 in response to applications filed by the landlords and by the tenant. The landlords have applied for a monetary order to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and for an order that the landlords return the tenant's personal property.

The hearing did not conclude on June 2, 2011 and was adjourned to June 28, 2011, at which time the tenant attended with legal counsel, and the landlords attended with a person to assist interpreting the evidence from the English language to the Mandarin language and from the Mandarin language to the English language.

The parties provided evidence in advance of the hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All testimony and evidence provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the tenant withdrew the applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement; as well as the application for return of the security deposit.

### **Issue(s) to be Decided**

Are the landlords entitled to an order permitting the landlord to keep all or part of the pet damage deposit or security deposit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord return the tenant's personal property?

### **Background and Evidence**

This month-to-month tenancy began on September 1, 2010 and ended on January 26, 2011. Rent in the amount of \$400.00 per month was payable in advance on the 1<sup>st</sup> day of each month. The landlords testified that the tenant did not pay rent for the months of December, 2010 or January, 2011. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00. The landlords did not cause a move-in or a move-out condition inspection report to be completed, although the parties completed a walk-through of the rental unit at the outset of the tenancy.

The landlords further testified that they cleaned the rental unit after the tenant moved out, so they feel they should be permitted to keep the security deposit. They also testified that it took 8 hours to complete the cleaning and garbage removal.

The landlords further testified that a hearing was held under the *Residential Tenancy Act* before a Dispute Resolution Officer and a written Decision was rendered on January 18, 2011 under file numbers 767144 and 767245, wherein the Dispute Resolution Officer granted the landlords an Order of Possession and a monetary order for unpaid rent in the amount of \$850.00 which has not yet been paid by the tenant. Further, the Decision permits the landlord to keep the security deposit.

The tenant's counsel asked that the *Residential Tenancy Branch* decline jurisdiction, and applied to amend the tenant's application to increase the application for a monetary order to an amount in excess of \$25,000.00 and stated that the tenant intends to bring an action in Supreme Court against the landlord, the Court Bailiff and the moving company. The tenant was removed from the rental unit by a Court Bailiff and the tenant's claim will exceed the monetary limit for claims under the *Small Claims Act*.

### **Analysis**

Where the parties have attended before a Dispute Resolution Officer, the Decision and orders of that Dispute Resolution Officer are final and binding. The Decision dated January 18, 2011 permits the landlord to keep the security deposit in partial satisfaction of the landlords' claim for unpaid rent and filing fees in the amount of \$850.00. I cannot change that Decision and therefore, the landlord already has an order to keep it as partial satisfaction of the \$850.00 award against the tenant. The landlord is at liberty to enforce that monetary order up to the amount of \$650.00 and keep the security deposit. The landlords' application to again keep it must be dismissed.

The tenant's claim for return of the security deposit must also be dismissed.

With respect to the tenant's claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, in considering the application to amend the tenant's application, the *Residential Tenancy Act* states as follows:

**64** (3) Subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may

- (a) deal with any procedural issue that arises,
- (b) make interim or temporary orders, and
- (c) amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The Residential Tenancy Branch Rules of Procedure state as follows:

If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.

I further refer to Residential Tenancy Policy Guideline 23, Amending an Application for Arbitration, which states as follows:

"An application must contain sufficient details and where it does not, the arbitrator may dismiss the application with leave to reapply or allow the application to be amended to get further particulars. Where an applicant requests an amendment of the application to give further and/or better details, the arbitrator may allow the amendment, or may refuse it. Similarly, where an applicant requests an amendment to increase the amount being claimed, the arbitrator may allow the amendment, or may refuse it. The application will not be amended where it would result in prejudice to the other party. If the amendment is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application."

In this case, the tenant retained legal counsel after the first scheduled hearing, but before the second scheduled hearing before me. In order to be satisfied that the amendment ought to be allowed, I must consider whether or not the landlord would be prejudiced by such an amendment. Where I find that a party is entitled to amend an application to increase the monetary amount claimed, I must be satisfied that the other

party has had sufficient notice or adjourn the hearing. In this case, the tenant's application to amend the monetary amount brings the application beyond the jurisdiction of the *Small Claims Act*, and the Residential Tenancy Branch would no longer have jurisdiction to hear the dispute, and counsel for the tenant has advised that a claim will be brought in Supreme Court, which does have jurisdiction. The landlords would be provided with sufficient notice of any application brought in that Court, and therefore, I find that the amendment would not prejudice the landlords and the amendment should be allowed.

### **Conclusion**

For the reasons set out above, the landlords' application for a monetary order to keep all or part of the pet damage deposit or security deposit is hereby dismissed without leave to reapply.

The tenant's application to amend the Tenant's Application for Dispute Resolution is hereby allowed, and I decline jurisdiction with respect to the tenant's applications for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order that the landlords return the tenant's personal property.

The tenant's application for a monetary order for return of the pet damage deposit or security deposit is hereby dismissed as withdrawn, without leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn, without leave to reapply.

Since neither party has been successful with their claims, I decline to order that either party recover the filing fee for the cost of these applications.

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: July 18, 2011.

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Residential Tenancy Branch