



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Is the tenant entitled to the order requested?

### Summary of Background and Evidence

This tenancy began in 1999. The rental unit was a trailer. The rent was \$600.00 per month. The tenant paid a security deposit of \$1,000.00 three years after the tenancy began. On February 23, 2010 the tenant left the trailer to go travelling. The tenant's belongings remained in the rental unit. The landlord cashed the tenant's rent cheques for March 2010 and April 2010.

Prior to the tenant's departure on his trip, the landlord had advised the tenant that the rental unit was going to be inspected for insurance purposes. Subsequently, the unit was inspected and a report prepared. In his report dated March 4, 2010, inspector Bill Lynch concluded that the rental unit "should not be inhabited" in its current state. Based on this report, the landlord arranged for the entire trailer and its contents to be taken to the dump. In an e-mail to the tenant dated March 27, 2010 the landlord advised the tenant that she had disposed of the trailer and the contents.

By way of a letter dated June 7, 2010 sent by regular mail the tenant provided the landlord with his forwarding address. To date, the landlord has neither returned any of the tenant's deposit nor filed an Application for Dispute Resolution claiming against the deposit.

At the hearing, Mr. B testified that he was devastated following the news that his home had been taken to the dump. Mr. B testified that he had been homeless for 13 years

prior to finding this home in \*\*\* and that the destruction of his home sent him psychologically back to how he felt when he had been homeless. Mr. Bt testified that he resided at a shelter for approximately 8 months until he was able to find adequate replacement housing.

For her part, Ms. H testified that she had only purchased this manufactured home because she had felt badly for Mr. B and wanted to help him after meeting him in a parade in \*\*\* in 1996. Ms. H testified that they had a close, friendly relationship and that she trusted him unconditionally but that she had underestimated the extent of his underlying mental condition. According to Ms. H's written submission, after two winters of occupation by Mr. B, the trailer began to look strange. As well, Ms. H claimed that Mr. Bt began having problems with following park rules and getting along with park staff. Ultimately, she had the trailer inspected for insurance purposes and found that it was uninhabitable. Ms. H submitted photographs of the interior and exterior of the trailer. Ms. H also testified that she has suffered too – both emotionally and financially.

### Analysis

The tenant has made a monetary claim against the landlord comprised of the following:

Return of Rent (March & April 2010)	\$696.77
Equivalent of one month's rent	\$600.00
Return of illegal deposit and double the legal deposit	\$1,600.00
Replacement cost of property destroyed	\$5,340.48
Aggravated damages	\$10,000.00
<b>TOTAL</b>	<b>\$18,237.25</b>

I shall deal with each portion of this claim in turn.

Return of Rent – The tenant has requested return of the rent he paid for March 2010 on a pro-rated basis and return of the rent he paid for April 2010. Based on the evidence before me, I am satisfied that the tenant has established this portion of the claim. ***I therefore order the landlord to pay to the tenant the sum of \$696.77.***

Equivalent of One Month's Rent - The tenant makes this claim on the basis that the landlord should have served him with a two-month Notice to End Tenancy for Landlord's Use rather than just removing the trailer and throwing his belongings in the dump. If the landlord had followed the correct procedure the tenant argues – he would have been

entitled to receive from the landlord the equivalent of one month's rent under Section 51.

This is a hypothetical argument being made by the tenant and I am not satisfied that the tenant has established this portion of the monetary claim. The tenant has made other monetary claims to compensate for the landlord's failure to follow proper procedure. ***I therefore dismiss the tenant's claim in this regard.***

Return of Illegal Deposit and return of Double the Deposit – The landlord collected a security deposit of \$1,000.00 which was \$700.00 more than she was entitled to collect under Section 19(1) of the Act. ***I therefore order the landlord to return to the tenant the sum of \$700.00 plus interest in the amount of \$24.80 calculated from July 1, 2002 for a total of \$724.80.***

As for the tenant's claim for return of double the security deposit, I find as follows. Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has done neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit.

On the basis of the foregoing, I find that that the tenant is entitled to receive \$600.00 plus \$10.63 in interest on the original amount of the deposit calculated from July 1, 2002. ***I therefore order the landlord to pay to the tenant the sum of \$610.63.***

Replacement Cost of Property Destroyed – In support of this portion of the claim, the tenant has submitted a detailed list of the items he claims he lost together with a carefully prepared calculation of the replacement value thereof. Back-up valuations from stores and the internet have been provided for many of the items.

Clearly, it is impossible for anyone to be sure of precisely what was in the trailer when it was taken to the dump but I agree with the tenant's advocate that this cannot be held against the tenant. The landlord was clearly in violation of the Act and Regulations in the way she handled the tenant's property and made it virtually impossible for the tenant to verify his claim.

On balance, I do not find the tenant's claim for the loss of *all of his* belongings to be excessive. The way he lived may well not have been in-keeping with the way in which most people live but that does not render his possessions worthless. I am therefore satisfied that the tenant has proved this portion of his claim in full. ***I therefore order the landlord to pay to the tenant the sum of \$5,340.48***

Aggravated Damages – The tenant has made a claim of \$10,000.00 in aggravated damages. The tenant argues that the landlord “not only behaved in a high handed manner by destroying his home without court authority, without proper notice and without any effort to preserve his personal property but also acted in reckless disregard for his welfare in light of her familiarity with his medical condition and history of depression.”

The Residential Tenancy Policy Guideline number 16 addresses claims in damages. The Policy Guidelines are intended to provide a compendious statement of the law, including the common law principles that apply to residential tenancy matters. Policy Guideline 16 provides in part as follows:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

On the basis of the principles set forth in the Guideline, I find that the landlord is liable to the tenant for aggravated damages. I so find because I am satisfied that the landlord's actions went beyond simple negligence and amounted to a reckless disregard for the welfare of the tenant. It matters not that the tenant had been helped enormously through the years by the landlord.

I do, however, find the tenant's claim to be excessive and find that the tenant is entitled to only \$2,000.00 in aggravated damages. ***I therefore order the landlord to pay to the tenant the sum of \$2,000.00.***

#### Conclusion

I have found that the tenant has established a total monetary claim against the landlord in the amount of \$9,372.68 comprised of the amounts set forth above. ***I therefore order that the landlord pay to the tenant the sum of \$9,372.68. This order may be filed in the Small Claims Court and enforced 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*.