



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, O, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent; the tenant's agent and the female tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lock changes and for advertising costs; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 5, 2011 for tenancy to begin on April 1, 2011 for a 1 year fixed term tenancy for a monthly rent of \$2,000.00 due on the 1<sup>st</sup> of each month and a security deposit of \$1,000.00.

The landlord testified the tenants were provided with keys to the rental unit prior to the start date of the tenancy. The landlord states this began the tenancy and the tenants assert the tenants only obtained the keys to do some painting but that the tenancy was not set to begin until April 1, 2011.

In his application, the landlord asserts the tenants arrived at the rental unit with a cat, despite the expressed prohibition of pets in the addendum to the tenancy agreement. After discussion on the matter, the landlord states the tenants advised him that they had changed their mind and did not want to rent the house.

The landlord's agent, at the start of the hearing, confirmed he had not seen a cat but rather he provided a response of "no" to the tenants regarding their request to pet sitting for about a month for a friend's cat. The agent also noted that the parties agreed on the phone to end the tenancy.

The tenants assert that they had a number of concerns after attending the rental unit while the owner was still living in the unit with requests from them to continue to use the garage and access to the garden for the owner's use after the tenancy began. But that they did not end the tenancy, rather the landlord's agent took the keys back from them and changed the locks on the residential property.

The landlord seeks compensation for rent for the month of April, 2011; for changing the locks on the rental unit; and for costs associated with advertising the rental unit to re-rent the unit.

The landlord asserts the tenants' intention was to not take occupancy of the rental unit or else they would have sought a remedy to getting the keys back from the landlord by contacting the Residential Tenancy Branch. The tenants submitted that the male tenant was dealing with a serious illness and they could not deal with the issues but rather returned to their old rental unit.

### Analysis

To be successful in a claim for loss or damage the burden of proof is on the applicant and they must provide sufficient evidence to establish the following 4 points:

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

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. As per the tenancy agreement submitted these rights and obligations under this tenancy began on March 5, 2011, regardless of any purpose that keys were provided to the tenants.

In addition, in the case of verbal records of events, I find that where the parties agree on the events, there is no reason why any term of agreement that arises cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal record, by its nature, is virtually impossible for a third party to interpret when trying to resolve disputes.

The landlord's agent testified that the parties agreed to end the tenancy over the phone and that they would meet the following day to return the keys and he states in his application that the tenants "handed back the house while the locksmith was there".

The landlord provided no testimony as to why the locksmith would be at the residential property to change locks when the tenants would be returning the keys. In the absence of any corroborating evidence or testimony, I find it more likely the landlord intended to

end the tenancy and refuse access to the tenants by changing the locks than requiring a change of locks if the tenants were returning the keys voluntarily and by agreement by both parties.

I accept the landlord failed to receive rent for the month of April 2011, however, as the parties continue to dispute the events and based on the incongruence's of the landlord's agent's testimony noted above, I find the landlord has failed to provide sufficient evidence to establish that the losses relate to a violation of the *Act*, regulation or tenancy agreement on the part of the tenants.

### Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety and order the landlord return the security deposit to the tenants in accordance with Section 38 of the *Act*.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,000.00** comprised of the security deposit owed.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: July 25, 2011.

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Residential Tenancy Branch