



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for unpaid rent and to keep the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on June 24, 2011. The tenant confirmed receipt of the hearing documents.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep all or part of the tenants' security deposit?

### Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2009 and ended on June 31, 2011. Rent for this unit was \$1,200.00 per month due on the first day of each month. The tenant paid a security deposit of \$600.00 on August 28, 2009. The

landlord agrees he failed to do the move in and move out condition inspection reports at the start and end of the tenancy and agrees he received the tenants forwarding address on July 17, 2011.

The landlord testifies the tenant was only supposed to have one dog at the rental unit but brought two other dogs to the unit. He states the tenant would not sign a tenancy agreement prior to the start date of his tenancy and wanted to sign it on the first day of the tenancy. The landlord testifies on the day the tenant was moving in to the unit he brought him the tenancy agreement to sign but was told the tenant had no time to sign it and he took it of the landlord and throws it into the cab of his truck. The landlord seeks to recover additional rent of \$1,100.00 for the tenants' three dogs at \$50.00 per month for 22 months of the tenancy. He states he went to a dog pound and determined that they charge \$19.00 per day for a dogs care so feels \$50.00 per month is a fair amount to charge the tenant.

The landlord testifies the tenant owes him back rent of \$1,600.00 for a garage at \$100.00 per month for the 16 months of the tenancy. He states the tenant bought another car to the unit and used the garage space to park this. The landlord states he wrote up another agreement for the tenant to sign concerning the garage space but the tenant refused to sign this also.

The landlord states the tenant brought additional cars onto the property a Toyota pickup, a Chevy car and a utility trailer. He states the tenant was not allowed to have three cars parked on the property by the Regional District Bylaws and was advised to remove them. The landlord states the tenant refused to remove these vehicles and so the landlord seeks to recover an additional rent of \$100.00 per month for 22 months of the tenancy to the sum of \$2,200.00.

The landlord seeks to recover \$600.00 from the tenant because he failed to clear up all the dog feces in the yard. The landlord testifies he and his wife spent two weeks cleaning this feces from the yard. In the landlords written submissions he also seeks to recover costs of \$100.00 for bark mulch for the dog run and \$100.00 for his labour to clean and install it. He

seeks to recover \$100.00 to clean and remove hedge cuttings and he seeks \$300.00 for dog damage to the front doorway.

The tenant testifies the landlord did not ask him to sign a tenancy agreement until 6 months into his tenancy. He states he always had three dogs and the landlord was aware of this before he moved into the rental unit.

The tenant testifies the landlord did not ask him to sign another tenancy agreement concerning the garage. He states the landlord said he could use the garage and he just had to put the power into his own name as it was on a separate meter. The tenant disputes that he was not allowed to park additional cars at the property he states the landlord was aware at the start of the tenancy that the tenant had these vehicles and was alright about them being there.

The tenant disputes he left dog feces in the yard when he moved from the rental unit. The tenant has provided photographic evidence of the yard and unit to dispute the landlords' claims that he left cuttings and states this was a fallen tree. He states the bark mulch was in the same condition as it was in when he rented the property. The tenant states his photographs show the rental unit was left in a clean condition and of good repair. At the hearing the tenant requests to recover his security deposit.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for \$1,100.00 for rent for two additional dogs; the landlord has provided no evidence to show that he was not aware that the tenant had three dogs and no tenancy agreement has been provided in evidence to show the agreement limited the tenant to one dog. Even if this was in place a landlord is not entitled to charge rent for additional pets. Consequently this section of his claim is dismissed.

With regards to the landlords claim for additional rent for the garage of \$1,600.00, I find again that there is no tenancy agreement in place to determine that the garage was part of

the tenancy or not. As I cannot determine that the garage was part of the agreement or not I find this would be a separate arrangement between the parties to rent this space and as it is not part of a residential tenancy agreement it does not fall under the Residential Tenancy Act. Consequently I dismiss this portion of the landlords' application.

With regard to the landlords claim for \$2,200.00 because the tenant had three vehicles parked on the property. Without a tenancy agreement in place to show that the tenant was limited to the amount of vehicles he could park at the property I find the landlord has not met the burden of proof in this matter and this portion of his claim is therefore dismissed

With regard to the landlords' application to recover damages due to the alleged dog feces, bark mulch, discarded clippings and dog damage to the front entrance way. In this matter the burden of proof falls to the claimant to provide evidence that the damage or cleaning required was the result of the actions or neglect of the tenant. If the tenant contradicts the landlords' testimony the landlord would be required to provide additional corroborating evidence to meet the burden of proof.

The tenant does dispute all aspects of the landlords claim for damages and it is my decision that the landlord has not met the burden of proof in any of these matters. Consequently these portions of the landlords' application are dismissed.

The landlord has applied to keep the tenants security deposit of \$600.00. As the landlord has been unsuccessful with his claim I find the security deposit must be returned to the tenant. Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security deposit has been extinguished he is not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord his forwarding address in writing (which ever date is the later) the landlord must pay double the security deposit to the tenant.

The landlord agrees he did receive the tenants forwarding address on July 17, 2011 and the tenancy ended on June 31, 2011. Therefore as the landlord had extinguished his right to file an application to keep the security deposit by failing to do either the move in or move out condition inspections I find the tenant is entitled to recover double his security deposit from the landlord to the sum of \$1,200.00.

#### Conclusion

The landlord application is dismissed in its entirety without leave to reapply.

A Monetary Order has been issued to the tenant for the return of double his security deposit to the sum of **\$1,200.00** pursuant to s. 38 (6)(a) and 38(6)(b) of the Act. 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: October 03, 2011.

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Residential Tenancy Branch