



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This was an application by the landlord for a monetary order and an order to retain the tenants' security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and if so in what amount?

### Background and Evidence

The rental unit is a house in Kelowna. The tenancy began for a one year fixed term on June 1, 2010. Monthly rent was \$1,500.00 and the tenant paid a security deposit of \$750.00 on March 5, 2010. In February, 2011 the basement of the rental unit was flooded. The basement was dried after the flood and the tenants continued to live in the rental unit. On April 29, 2011 the tenants agreed to a new fixed term tenancy ending May 31, 2012. It was a term of the agreement that the tenants were to be responsible for: "yard maintenance, lawns, watering, gardens". The landlord was to be responsible for major yard maintenance in the spring and fall.

The landlord testified that on July 1st the tenants gave her a notice that they intended to move out on August 15<sup>th</sup>. She said that the tenants maliciously caused a second flood in the rental unit by placing a water sprinkler on the ground against the wall of the house. The sprinkler was controlled by an automatic timer and when it turned on the basement was flooded. The tenants moved out on July 15, 2011. They stopped payment of their rent cheque in payment of rent for the month of July.

In her application for dispute resolution filed on July 3, 2011 the landlord claimed payment of the sum of \$20,000.00. In later documents she claimed payment of the sum of \$6,521.81 made up of the following:

• Rent for July,	\$1,500.00
• NSF cheque charge	\$40.00
• Advertising for new tenant	\$313.46
• Rug cleaning	\$78.40
• Labour, flood, furniture moving	\$350.00
• Loss of shrubs not watered	\$29.99
	○ \$34.99
	○ \$39.99
	○ \$100.00
• Postage and service	\$23.73
• Arbitration court services costs	\$100.00
• Reimbursement of timers & sprinklers	\$56.00
• Extra because tenant not watering	\$35.75
• Diagnostic fee	\$89.50
• Diagnostic fee	\$60.00
• Labour to take down fence	\$40.00
• Weeding & maintenance garden	\$400.00
• Reimbursement to relative for lawn cutting	\$400.00
• Holes in wall	\$40.00
• Fine for deliberate and malicious act	\$2,500.00

The tenants testified that they agreed to enter a new fixed term tenancy based on the landlord's promise to do necessary work, including replacing a carpet, fixing some mouldy waterlogged wall board, replacing a grape arbour and fixing a septic problem. The tenants said when the work was not finished after four months they gave notice that they would move out in August. When the flood happened in July they decided to leave as soon as possible and moved out on July 15<sup>th</sup>.

The tenants denied any responsibility for the July flood. They said that they did not move the sprinkler and in fact it was placed near the house by the landlord.

The landlord re-rented the house effective August 1, 2011 at a monthly rent of \$1,500.00.

### Analysis and conclusion

The landlord claimed that the tenants caused the second flood and that it was done maliciously. The tenants denied any responsibility for the flood; they said that they did not place the sprinkler against the house. I find that the landlord has not proved on a balance of probabilities that the basement flood was caused by the sprinkler or that the tenants were in any way responsible for placing it against the house or turning it on. The landlord testified that she purchased the sprinklers and she installed and set the automatic timers that turned the sprinklers on and off. There is no evidence to show that the tenants acted maliciously and on the evidence presented, including some hearsay statements which are disputed by the tenants, there is insufficient evidence to support a finding that the tenants were responsible for the July flood or the damage that resulted. The landlord's claims relating to flood damage and cleanup are dismissed without leave to reapply. There is no basis for the levying of a fine and I have no authority to do so in any event; this claim is dismissed.

I did not find the landlord's claims with respect to yard maintenance, lawn cutting or plant replacement due to insufficient watering to be convincing. The landlord claimed to have paid her children and relatives for yard work. The landlord was responsible for major yard work; the tenants said that they performed yard work save and except when it was too wet to cut. I find that the landlord has not proved that the tenants should reimburse her for her supposed payments to family members for lawn cutting and maintenance. I deny these claims.

I find that the tenants did not have cause to end the fixed term tenancy. The flood itself did not justify ending the tenancy and there was no term in the renewed tenancy agreement that set out work to be done by the landlord as a condition of entering the new tenancy agreement. I find that the tenants ended the agreement before the end of the fixed term without valid grounds and that they did not give one month's written notice. The landlord advertised the unit for rent and succeeded in renting it for August 1, 2011. I find that the landlord is entitled to loss of revenue for July in the amount of \$1,500.00. The landlord is entitled to recover her advertising costs in the amount of \$313.46 and a \$40.00 NSF cheque charge for the July rent cheque. The tenants put up a dog fence and it was their responsibility to remove it at the end of the tenancy. I allow the landlord's claim for removal of the fence in the amount of \$40.00.

The remainder of the landlord's claims, including any that I have not specifically mentioned are dismissed without leave to reapply. The total award to the landlord is the sum of \$1,893.46. The landlord is entitled to recover \$50.00 of the \$100.00 paid to file her application for a total award of \$1,943.46. I order that the landlord retain the tenants' security deposit of \$750.00 in partial satisfaction of this claim and I grant the

landlord a monetary order under section 67 for the balance of \$1,193.46. This order may be registered 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*.

Dated: October 04, 2011.

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Residential Tenancy Branch