



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damage or loss, and reimbursement of the filing fee for this Application, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, damage or loss, and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties confirmed that the Landlord was granted an order of possession on the rental unit on September 26, 2011 following a hearing that date; and the Tenants moved out of the rental unit in late September 2011.

The parties confirmed that they had a written tenancy agreement which commenced on July 01, 2011. The parties also confirmed that rent was \$1,300.00 per month due on the first of each month. The parties confirmed that the Landlord received a security deposit of \$650.00 from the Tenants on June 30, 2011, which has not been returned to the Tenants at this time. The parties confirmed that the Landlord had held a pet deposit in the amount of \$650.00 as well, and that this was returned to the Tenants at the time the tenancy ended.

The Tenants stated that they completed moving and clearing out the rental unit by September 22, 2011. The Tenants stated that the Landlord was provided with their written forwarding address on September 22, 2011 to send the security deposit to. The Landlord stated that she received the forwarding address from the Tenants on September 26, 2011. The Landlord filed the Application for dispute resolution to retain the security deposit and claim unpaid rent and damage or loss on October 03, 2011.

The parties agreed that \$350.00 rent was outstanding for August 2011 and \$1,300.00 rent had not been paid for September 2011.

The Landlord states that the Tenants left some garbage and wood debris outside the rental unit. The Landlord stated that the Tenants left three garbage bags and two boxes which she took to the dump in her car. The Landlord stated that the three garbage bags had been accessed by animals and that animals had strewn garbage all over the property, which the Landlord cleaned up. The Landlord stated that the Tenants also left large pieces of wood on the property, which they have not removed, and the Landlord has not removed it at this time but plans to do so soon. The Landlord states that it cost \$9.40 for the garbage disposal at the dump on September 26, 2011. The Landlord has valued her damages and losses on September 26, 2011 as one hour for the garbage disposal, vehicle fuel, wear and tear, and to clean her car at \$40.00. The Landlord has not removed or disposed of the wood at this time, but estimates her future damages and losses as two and a half hours for wood moving and burning and vehicle use, wear and tear, and fuel to do this at \$100.00. The Landlord is seeking a total of \$140.00 for damages and losses.

The Tenants state that they did not leave two boxes on the property and that there was a box and container beside the house that were full when the Tenants moved in, and they did not add to it or remove it as it was the Landlord's. The Tenants state that the three bags of garbage that they left were placed in the usual location for garbage pickup which was to occur that same week. The Tenants state that they regularly had three bags of garbage, that they did not use a garbage can while they resided at the property, and that the garbage bags they put out regularly were always picked up on garbage day without complaint. The Tenants state that if the Landlord was concerned about animals the Landlord could have put the garbage in one of the buildings on their property until it was garbage day, as the Tenants had moved out. The Tenants state that they have a friend who wants to buy the wood and that the friend is planning to pick it up and remove it within a week. The Tenants stated that if their friend does not pick up the wood by November 21, 2011, that the Landlord is entitled to dispose of it. They had thought the Landlord wanted it for firewood. They state that the Landlord is not entitled to damages and losses.

The Landlord states that the Tenants should have been using a garbage can during their tenancy, as it created a large mess for the Landlord to clean up after animals had gotten into the bags. The Landlord also states there is a limit as to how much garbage can be picked up on garbage day, but did not have evidence as to what the limit was. The Landlord states that they do not want the wood for firewood and they will dispose of the wood only after November 21, 2011 if the Tenants' friend fails to pick it up by then.

The Landlord has applied to keep all or part of the security deposit of \$650.00 towards the unpaid rent and/or damages and losses.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties agree that the Tenants moved out of the rental unit. As the parties have not agreed on the date in late September 2011 on which this occurred, I find that the tenancy ended on September 26, 2011, as that is the date of the order of possession received by the Landlord.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between the parties is that rent is due on the first of the month. I find that the Tenants failed to pay \$350.00 of the August 2011 rent and all of September 2011 rent (\$1,300.00).

I find that the Landlord has established a monetary claim of \$1,650.00 for unpaid rent.

I find that the Landlord failed to put the Tenants' garbage in a secure location until garbage day, and that the Tenants are not responsible for the animals getting into the garbage bags. There is no documented agreement between the parties stating any specific method as to how garbage must be stored by the Tenants. Specifically, there is no indication that it must be stored in a container. I find it reasonable that the Tenants placed their garbage in bags for garbage pickup throughout their tenancy including when their tenancy ended. I also find no evidence that the Tenants left two boxes as stated by the Landlord, as there was no documented evidence provided to demonstrate that these items were left by the Tenants, and the Tenants do not agree that these were theirs. As a result, I dismiss the Landlord's claim for damages and losses for disposal of the garbage.

With regards to the wood, I find that this is the Tenants' personal property and not garbage. As the Landlord did not have the Tenants' agreement to dispose of these items prior to the hearing, and the Landlord has not removed these items, I find that it is premature for the Landlord to file a claim for damages and losses for disposing of this wood and I dismiss this portion of the Landlord's claim, with leave to reapply

As the Landlord has mostly succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenants bringing the total amount owing to \$1,700.00

I order that the Landlord retain the security deposit (\$650.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,050.00**

Conclusion

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$1,050.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: November 21, 2011.

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Residential Tenancy Branch