



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1237.50

Background and Evidence

The applicant testified that:

- He had set up a gazebo in the front yard of the rental property and had a bench press and weight set in the gazebo.
- The landlord was unhappy with the gazebo and weights being in the yard and wanted them removed.
- He told the landlord that I would remove them however before I could the landlord removed them himself and has never returned them.
- He asked the landlord to return them but he told me he had thrown them away.
- I also paid a \$160.00 cash security deposit to the landlord which has never been returned.

The applicant is therefore requesting a monetary order as follows

Weights For Weight Set	\$390.00
Weight bench	\$150.00
Curling bar	\$45.00
Dumbbell bars	\$30.00
Covered gazebo	\$290.00
Security deposit	\$160.00
Total	\$1065.00

The respondent testified that:

- The tenant did set up a gazebo and a weight set in the front yard of the rental property.
- He asked the tenant to take down the gazebo and take the weights out of the yard, however the tenant failed to do so.
- He therefore removed the gazebo and the weights and took them to a storage facility where the tenant had some other belongings still stored.
- The manager of that facility told him that the tenant picked up his weights but stated he no longer wanted the gazebo.
- Further the amounts claimed by the tenant are for new items and these were very well used older items.
- He also disputes the fact that the tenant paid him \$160.00 security deposit, as he only received \$50.00 from the tenant.

In response to the landlord's testimony the tenant testified that:

- At no time did he ever go to the previous facility and pick up any weights.
- At no time did he ever tell the manager of the previous facility that he did not want his gazebo.

Analysis

Security deposit

The tenant has applied for the return of the security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

I therefore dismiss this claim with leave to re-apply.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today January 19, 2011.

Gazebo and weight set

It is my decision that I will allow a portion of the claim for gazebo and weight set.

The landlord removed the tenant's gazebo and weight set from the property without any authority to do so, and the landlord has admitted that he took the weight set and the gazebo to another facility.

I accept the tenant's testimony that when he requested return of the gazebo and weight set the landlord refused to do so.

The landlord claims that the tenant later retrieved the weight set and waived claim to the gazebo, however it is my finding that the landlord has not met the burden of proving that claim.

I do however except the landlord's statement that the gazebo and the weight set were older and well used and therefore I will not allow the full amount claimed by the tenant for those items.

Further although the tenant claims that the total replacement cost is \$905.00, he has provided no actual independent written estimates of the value of those items.

It is my decision therefore that I will only allow 20% of the amount claimed by the tenant for the replacement of the missing gazebo and weight set.

Amount allowed- \$181.00

Conclusion

I have issued an order for the landlord to pay \$181.00 to the tenant.

As stated above I dismiss with leave to reapply the claim for the return of the security deposit.

The remainder of this monetary claim is dismissed without leave to reapply.

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: January 19, 2012.

Residential Tenancy Branch