



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order. The tenants testified and provided evidence showing that they served the landlord with their application for dispute resolution and notice of hearing via registered mail on December 7, 2011. They testified that the package was returned to them unclaimed. I accepted that the landlord had been properly served with notice of the hearing and of the claim against him and the hearing proceeded in his absence.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The tenants' undisputed testimony is as follows. In August 2011 the tenants responded to a Craigslist advertisement in which the rental unit was described as being 1,000 square feet. The tenants were living in Edmonton, Alberta at the time and entered into an email exchange with the landlord in which the landlord confirmed the square footage of the unit. The tenants sent an acquaintance to view the unit and agreed to rent the unit. The tenants gave the landlord a \$1,075.00 security deposit and the parties signed the tenancy agreement. The tenancy began on September 1, 2011 and the tenants paid \$2,150.00 in rent for that month.

When the tenants arrived at the rental unit, they discovered that the unit was significantly smaller than what had been advertised and were unable to fit their belongings inside. They contacted the landlord and on September 8 had a meeting with him at which they asked him to agree to end the tenancy immediately. The landlord stated that he would only agree to this if the tenants found new tenants and took responsibility for the administrative tasks associated with placing new tenants in the unit. On September 14, the tenants gave the landlord written notice via email advising that they were ending the tenancy on October 15 as he had misrepresented the size of the unit.

The landlord made arrangements to show the rental unit to prospective tenants and advised the tenants that as of October 1, they were no longer legal tenants and suggested that he would be within his rights to enter at will. The tenants secured another lock which they installed at night in order to ensure their privacy and safety. They seek to recover the cost of that lock.

In late September, the landlord advised the tenants that he had misplaced his keys and asked that they provide him with keys and an access fob for the parking area. The tenants complied and the landlord did not return those keys. The tenants incurred a cost of \$85.00 to replace the fob and building key which they required to access the building and parking area.

The tenants seek to recover their moving costs of \$176.40 for supplies and \$595.00 for movers as well as the \$58.24 cost of forwarding mail from Edmonton to their post office box and the \$47.04 cost of forwarding mail from the rental unit to their post office box.

The tenants testified that at the end of the tenancy, they told the landlord he could retain their security deposit to cover occupational rent for half of October. They seek to recover the rent paid for the period in which they occupied the rental unit as well as the increased cost of rent they are paying at their new location, for which they are also paying a parking charge.

The tenants also seek aggravated damages as well as recovery of their filing fee and costs associated with pursuing their claim.

### Analysis

I accept the undisputed evidence of the tenants and I find that the landlord fraudulently misrepresented the size of the rental unit. When a party is induced into entering into a contract by a fraudulent misrepresentation, the aggrieved party is entitled to rescind the contract as well as damages suffered as a result of the misrepresentation. In this case, the tenants rescinded the contract in their letter of September 14. The tenants are entitled to be put back into the position in which they would have been had they not entered into the contract.

I therefore find that the tenants are entitled to recovery as follows:

I award the tenants **\$176.40** as the cost of moving supplies, **\$595.00** as the cost of hiring movers, **\$47.04** as the cost of forwarding mail from the rental unit to their post office box and **\$58.24** for the cost of redirecting mail from Edmonton to their post office box for a total award of **\$876.68** for moving costs.

Although the tenants are entitled to be restored to their original position, they are not entitled to be placed in a better position than they would have been in had they not entered into this contract. I find that the tenants should pay some occupational rent for the period in which they occupied the rental unit as they would have been paying rent somewhere in any event. Because the rental unit was not what they had contracted to receive, I find it fair to set occupational rent at \$1,433.33, which is 2/3 of the \$2,150.00 per month they were paying. I find that they are entitled to recover **\$716.67** for the month of September and **\$358.33** for the half of October in which they occupied the unit, which represents recovery of 1/3 of the \$1,075.00 in rent paid (through their security deposit) for that period. I dismiss the claim for the increased cost of rent and parking costs at their new residence as I find it more likely than not that they would have been required to pay approximately that amount in any event had they not entered into this contract. I find that the tenants are entitled to recover the cost of replacing the key and fob taken by the landlord and I award them **\$85.00**. I award the tenants **\$47.04** as the cost of changing locks as I find that the tenants had reason to believe that the landlord would not comply with his obligation under the Act to provide written notice prior to attempts at entry. These awards total **\$1,207.04** for other damages.

The Residential Tenancy Policy Guideline number 16 addresses claims in damages. Policy Guideline 16 provides in part as follows:

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by

an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

I find that the landlord deliberately and fraudulently misrepresented the size of the rental unit and knew or should have known that the tenants would not have entered into an agreement to rent the unit had they known its true size. Aggravated damages may be awarded where the conduct of the respondent justifies such an award but the award must be compensatory, not punitive, although the damages should take account of the claimant's intangible injuries such as distress and suffering.

I find that the landlord's actions caused significant stress for the tenants as they had to secure alternate accommodation while adapting to life in a new city and new places of employment. The tenants quantified their claim for aggravated damages by equating it to one week's wages, or \$3,500.00. They stated that they had to take several days off work in order to deal with the issues arising from the landlord's misrepresentation and the resulting move.

I find that an award of aggravated damages is appropriate, but I find that the amount suggested by the tenants would be punitive rather than compensatory. I find that an award of \$1,500.00 will adequately compensate the tenants and I award them that sum.

I find that the tenants are entitled to recover the **\$100.00** filing fee paid to bring their application. I dismiss the claims for the cost of mailing documents, obtaining a copy of the strata plan and photocopying as these are litigation-related expenses which I am not empowered to award under the Act.

### Conclusion

In summary, the tenants have been successful in the following claims:

Moving costs and mail redirection	\$ 876.68
Aggravated damages	\$1,500.00
Filing fee	\$ 100.00
<b>Total:</b>	<b>\$3,683.72</b>

I grant the tenants a monetary order under section 67 for \$3,683.72. This order may be filed in the Small Claims Division of the Provincial 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: February 21, 2012

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Residential Tenancy Branch