



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

#### **MNDC**

### **Introduction**

This hearing was scheduled in response to the tenants Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They presented affirmed oral testimony and to made submission during the hearing.

### **Preliminary Matters**

The tenant did not serve the landlord with her 3 page written evidence submission; therefore that document was set aside. The tenant was at liberty to make oral submissions.

The landlord stated that he was acting as agent for the estate of his father, the second respondent named on the application. The agent (referred to as landlord in this decision) stated that he had not had time to submit evidence; although he had been served with Notice of this hearing in November, 2011. In the absence of any compelling reason that the landlord was thwarted from gathering and submitting evidence, the hearing proceeded and the landlord was at liberty to make oral submissions.

Therefore, neither party has made any written submission for consideration.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation in the sum of \$5,400.00?

### **Background and Evidence**

The tenancy commenced several years ago, rent was \$500.00 per month, due on the first day of each month. The landlord is holding a deposit in the sum of \$250.00; the

tenant did not apply requesting return of the deposit and had not previously given the landlord a written forwarding address.

The tenant stated the landlord told her to leave the unit; the landlord testified that the tenant had been served a 1 Month Notice Ending Tenancy for Cause which had an effective date of October 1, 2011. The tenant confirmed that she had been given this Notice.

The tenant stated that in mid-September, the police told her she could not return to the rental property; she was placed on some sort of recognizance with restrictions that allowed only a 3<sup>rd</sup> party to attend at the unit to retrieve her belongings; the tenant was not to attend at the unit.

The tenant was able to locate a 3<sup>rd</sup> party effective October 1, 2011, but did not have her personal property removed from the unit. The tenant was then told by the landlord that her personal items had been disposed of at the dump.

The tenant is claiming the value of the loss of personal photographs, cross-stitch that she had completed over the years; items that had sentimental value.

The landlord stated that they did not take possession of the unit until October 3, 2011. They attended at the unit; found the door wide open and items such as moldy clothes and garbage left behind by the tenant. There was also one broken dresser that was left behind. The landlord has photographs, which were not submitted as evidence. There was no furniture in the home, any dishes or any other sign that the tenant continued to possess the unit.

The tenant had been seen by neighbours, entering the unit on several occasions between mid-September and October 1, 2011. The landlord believed that the tenant had vacated the unit on the basis of the 1 Month Notice ending tenancy and, on October 3, 2011, started to clean the unit and remove the items that were abandoned on the property. The landlord stated that the items left by the tenant had no monetary value.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant has not provided any evidence supporting her claim that she has suffered a loss as a result of a breach of the *Act* by the landlord. There is no evidence before me that the tenant continued to possess the unit beyond October 1, 2011. Her furniture and personal effects had been removed from the unit prior to October 3, 2011, and I find that

this occurred as a direct result of the Notice ending tenancy which the tenant did not dispute. There is no evidence before me that the landlord breached the Act when they took possession of the unit on October 3, 2011, and the tenant has not alleged that she had continued to reside in the unit beyond the effective date of the Notice ending tenancy that had been given to the tenant.

The tenant has not provided any witness statements, photographs or other evidence that supports her claim.

Therefore, in the absence of evidence that the landlord breached the Act and, in the absence of any evidence verifying the loss claimed; I dismiss the tenant's application.

The deposit shall be disbursed as provided by the Act.

### Conclusion

The application is dismissed.

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 02, 2012.

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Residential Tenancy Branch