



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MND, MNR, MNSD, MNDC, FF  
Tenant: MNDC, RPP, FF, O

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlord seeks a monetary order and an order to allow her to treat the tenant's possessions as abandoned. The tenant seeks return of his possessions and a monetary order.

This hearing was convened in response to the tenant's Application for Review Consideration submitted on December 16, 2011 regarding a decision and order issued on December 13, 2011. The decision of December 13, 2011 included as part of that decision an Interim Decision issued on November 18, 2011. Both decisions will be considered in this hearing.

This hearing was originally scheduled for January 18, 2011 and the tenant had been order to serve the landlord with the Review Consideration Decision and hearing documents within 3 days of receipt of them. The tenant failed to serve these documents sufficiently, however the landlord had been made aware of the hearing through discussion with the Residential Tenancy Branch (RTB) and attended.

I adjourned that hearing as the landlord had not received a copy of the Review Consideration Decision and had no time to prepare to deal with the case from the beginning again on such short notice. The hearing was reconvened on February 20, 2012 at which time the landlord; her legal counsel; the tenant and his witness attended the hearing.

After the hearing on January 18, 2011 I ordered the tenant to serve the landlord with the notice of hearing documents that he would receive from the RTB in accordance with the Residential Tenancy Branch Rules of Procedure, at least 5 days prior to the hearing. The tenant served the landlord with the documents on Friday, February 17, 2011 or one business day before the hearing.

The tenant testified that since 4 days after the last hearing he had been incarcerated and no-one at his parent's home (his current permanent address) had opened his mail until Friday, February 17, 2011 and at which point he had his girlfriend serve the landlord with the notice of hearing documents.

While I contemplated closing the hearing and dismissing the new hearing altogether for the tenant's second failure to follow through on orders of the Director, I did determine there would be no prejudice to the landlord to continue to hear the matter.

At the start of the second hearing the tenant amended his Application to exclude any monetary compensation he sought only the return of his personal belongings. During the hearing testimony was provided that the landlord had begun to dispose of some of the tenant's belongings.

I adjourned the hearing in order for the landlord to provide documentary evidence of what she had done with the items she had disposed of and advised the tenant that when we reconvened I would entertain a request to amend his Application if he wanted to again include compensation for items disposed of.

At the start of the hearing on March 8, 2012 I reiterated to the parties that the final hearing would deal solely with the inventory list of possessions the landlord had provided and to allow the tenant to amend his Application for any monetary compensation he thought was appropriate for dispose items. The tenant never requested an amendment to his Application.

#### Issue(s) to be Decided

The first issue to be decided is whether or not the decision of December 13, 2011 and the interim decision of November 18, 2011 should be set aside or varied.

If either of the above noted decisions should be set aside the issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; to retain the security deposit; for compensation for damage or loss and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenant is entitled the return of his personal property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on July 22, 2010 for 1 year fixed term tenancy beginning on August 1, 2010 for a monthly rent of \$2,545.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,250.00 paid.

The tenant vacated the rental unit on May 25, 2011 when he was arrested while trying to flee police by accessing neighbouring balconies on the 27<sup>th</sup> floor. The tenant was held in custody until July 15, 2011.

From the landlord's testimony the tenant failed to pay rent for June 1, 2011 and she served him with a 10 Day Notice to End Tenancy for Unpaid for which she obtained an order of possession on June 30, 2011.

The tenant's witness testified that he contacted the landlord as legal counsel for the tenant, his girlfriend and her mother to seek return of the personal possessions of the tenant, his girlfriend and her mother.

The witness identified that he provided the landlord with a letter on June 13, 2011 and one on June 24, 2011 and provided lists to the landlord of personal items that they sought to have returned.

The witness testified the landlord would not entertain the idea of returning any items until the tenant paid for damage to the rental unit that the landlord had determined had been caused by the tenant and his girlfriend during the tenancy.

A copy of a letter dated July 5, 2011 from the landlord to the witness, as the tenant's legal counsel, was submitted into evidence requesting payment for a number of items of damage; cleaning; moving and storage; strata move out fee; fraudulent charges to the landlord's hotel account; shower and plumbing repairs in the amount of \$16,190.27.

The witness testified that on or before July 25, 2011 he ceased to represent the tenant in any matters but continues to represent the tenant's girlfriend and her mother and wishes to retrieve their belongings.

The landlord submits that with the exception of some harassing phone calls to her the tenant did not contact her again and on August 17, 2011 she posted an advertisement in the local newspaper in accordance the requirements under the Residential Tenancy Regulation (Regulation) Sections 24, 25, 26, and 27.

The landlord submits that at the end of the 60 day period required by the Regulation the tenant had not contacted her and instead on November 3, 2011 he filed an Application for Dispute Resolution seeking to have his items returned, that resulted in the hearing first convened on November 18, 2011 and its subsequent interim (November 18, 2011) and final (December 13, 2011) decisions.

In response to the landlord's claim for compensation including for damage to the rental unit and damage or loss resulting from the tenancy, the tenant disputed that there was any problems with the shower or any significant damage to the hardwood floors but provided no evidence to support his position. The tenant does acknowledge some localized damage to the hardwood flooring due to spike heels.

The tenant testified he had not been back to the unit since May 25, 2011 and as such has not had the opportunity assess the landlord's claims personally. The tenant does not agree that the unit required the amount of cleaning specified by the landlord.

While the tenant acknowledged that he had charged items to the landlord's hotel account he testified that he had contacted the hotel to deal with them but that there had been a discrepancy as to the amount the tenant thought he owed and he had not worked it out with the hotel and had therefore not paid it. The tenant provided no testimony as to whether or not he owed the landlord any rent for either June or July 2011.

### Analysis

Section 24 of the Regulation states that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that for a continuous period of one month, the tenant has not ordinarily occupied and for which he has not paid rent and if the circumstances surrounding the giving up of the rental are such that the tenant could not reasonably be expected to return to the residential property.

As such and based on the testimony of both parties, I find that on May 25, 2011 the tenant abandoned the residential property. I also find that this is confirmed by the landlord's subsequent change of locks and the issuance of a 10 Day Notice to End Tenancy for which the tenant did not apply to dispute.

Section 25 of the Regulation requires the landlord to store the tenant's belongings in a safe place and manner for a period of not less than 60 days; keep written inventory of the property; keep particulars of the disposition of any property for 2 years following the date of disposition; advise a tenant or their representative who requests information that the property is stored or disposed of.

I accept, from the documentary evidence before me, that the landlord has stored the tenant's personal property in a safe place and manner and that the landlord has kept a written inventory of the property. I note here that the parties do have separate inventories that do vary in both items and values.

Section 26 of the Regulation allows a landlord to require the tenant to reimburse the landlord for his personal property before it is disposed of for the costs of removing and storing the property, any searches required prior to disposition of the property and satisfy any amounts payable by the tenant to the landlord under the *Act* or a tenancy agreement.

I accept that the tenant had legal counsel representing him for discussions with the landlord on the return of his possessions (and his girlfriend's possessions) until July 25, 2011. I also accept the tenant's position that until that time the landlord was seeking compensation for charges in addition to the moving, storage, search charges. As such, I find these discussions and negotiates were compliant with Section 26 of the Regulation.

However, after July 25, 2011 I accept the tenant's legal counsel no longer represented the tenant and that the tenant himself or any other representative for him did not contact the landlord at any time after July 25, 2011 to further any discussions about returning the tenant's belongings. As a result, I find the tenant did abandon his property.

Based on the above, I find no reasons to set aside or vary the interim decision issued on November 18, 2011 by DRO XXXXX that found the landlord has "acted lawfully in treating the goods as abandoned."

In relation to the landlord's claim for damages, I find, based on her documentary evidence, the landlord has established there was damage to the rental and cleaning required as described and that she has established the value of that damage and cleaning. As the tenant has provided only testimony to dispute the landlord's documentary evidence, I find the documentary evidence to be more reliable.

As the tenant provided no testimony disputing any unpaid rent or other charges the landlord is seeking and since he agrees he owes the compensation for the hotel billings I accept the landlord has established her claim in accordance with the findings of the December 13, 2011 decision and order.

As such, I find no reasons to set aside or vary the decision and order granted by DRO XXXXX on December 13, 2011.

### Conclusion

Based on the above, I confirm the interim decision of November 18, 2011 and the final decision and order of December 13, 2011.

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 18, 2012.

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Residential Tenancy Branch