



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MNSD, MNDC

### Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant is seeking the return of double the security deposit and compensation for a loss or damage suffered under the Act, the regulations or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

### Background and Evidence

This was a very contentious hearing; the relationship between these two parties is a very acrimonious one. Both parties were warned about their behaviour and demeanour during the hearing.

The tenancy began on or about December 1, 2010. Rent in the amount of \$1200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$600.00.

The landlord gave the following testimony; on January 31, 2012 the tenant gave notice to the landlord that they would be moving out on February 29, 2012 due to the fact the landlord was growing marijuana on the property, the marijuana was grown in a secure building that the tenant's were not authorized to enter, the landlord advised it was for

medicinal use and had a licence issued by the federal governing body, offered the tenant on multiple occasions to view his licence that entitled him to grow the marijuana but the tenant refused, the landlord never was aware that the tenant was running a business out of the home, the tenant moved out on February 6, 2012 and did not pay rent for the month of February, the keys and the remote were returned on February 12, 2012, the tenant installed insulation in the house without the landlords permission and now the landlord is seeking the \$700.00 for the labour the tenant charged the landlord.

The tenant gave the following evidence; the tenant occupied the home on an acreage property and ran a plumbing business from their home, became aware that the landlord was growing marijuana and wanted to move as soon as possible for fear of their safety in addition that the tenant's insurance company would not insure their plumbing equipment and supplies due to the fact that they resided on a property where marijuana was grown, the tenants are seeking the costs incurred to move and compensation for living on a property that was growing marijuana.

### Analysis

Both parties submitted documentary evidence and gave oral testimony for this hearing.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with each of the party's application as follows;

The landlord did provided a copy of the licence for this hearing that allows marijuana to be grown on the subject property and submitted it as evidence.

The landlord is seeking \$700.00 for the labour he was charged by the tenant for installing insulation in the floor of the rental unit. The tenant disputes that any arrangement was ever made in this regard. The landlord was unable to produce any written agreement for this specific issue and accordingly I dismiss this portion of the landlord's application.

The landlord is seeking \$1200.00 for unpaid rent for the month of February 2012. In the tenant's own testimony she agreed that she had not paid the rent and thought she was justified in doing so for the fact the landlord was growing marijuana. I do not agree with the tenant in this regard; she wilfully and knowingly withheld rent, they gave notice to the landlord that they would be moving out on February 29, 2012 and were obligated to pay the months' rent as is required under Section 26(1) of the Act, the tenant did not, accordingly I find that the landlord is entitled to \$1200.00.

The tenant is seeking \$1145.20 for the cost of moving + seeks to receive 25% of her monthly rent of \$1200.00 X 14 months = \$4200.00 + double the security deposit \$600.00 X 2 = \$1200.00. The total compensation sought by the tenant is \$6545.60.

The tenant's position is that she had made inquiries with her insurance company and was informed by the company that she would not be covered in the event of any claim due to the fact she resided on a property where marijuana was grown.

The tenant made no mention or provided any evidence of any **real loss suffered** during the hearing. The tenant is relying on a private agreement with her insurance company to be successful during this hearing. The landlord offered on several occasions for the tenant to view his licence to grow the marijuana but the tenant refused. Neither the tenant's personal safety nor their property was in a state of peril that would require them to vacate the premises prematurely. The tenant's argument was based on hypotheticals and not real issues that occurred during the tenancy. The tenant has not satisfied me that they are entitled to any compensation for the reasons I have outlined above.

I dismiss the tenant's application in its entirety without leave to reapply.

As for the monetary order, I find that the landlord has established a claim for \$1200.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$600.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$650.00. The landlord may retain the security deposit.

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: April 26, 2012.

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Residential Tenancy Branch