



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of all or part of the security deposit, an Order to have the Landlord comply with the Act, regulation or tenancy agreement, and to have the Tenants' personal property returned.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?
2. Are the Tenants entitled to a Monetary Order?

### Background and Evidence

The parties confirmed receipt of each other's hearing documents and the Tenants confirmed receipt of all of the Landlord's evidence. The Landlord confirmed receipt of the Tenants' first package of evidence however she stated she did not receive a copy of their Witness's written statement. Tenant KH advised that he served the Landlord this written statement on July 10, 2012 by placing it on the Landlord's car on her back windshield. I informed the Tenants that placing evidence on a car is not an accepted form of service and therefore the Witness's written statement cannot be considered in my decision as it was not received by the Landlord.

The Tenants confirmed receipt of the Landlord's evidence however they noted that the second set of evidence arrived late, in fact it arrived just a few hours prior to the

hearing. The late evidence consisted of a one page typed statement and 9 photos of the rental unit. The Tenants and Occupant confirmed they had opportunity to view the photos and read the statement and were prepared to proceed with the hearing.

The Landlord submitted copies of the following into evidence: typed statement, 9 photos, registered mail receipts, detailed list of their claim, e-mails between the parties, natural gas bills, and a copy of the real estate listing.

The Tenants submitted copies of the following into evidence: their witness statement, the Tenant's written statement and two photos of a mattress.

The parties agreed they entered into a fixed term tenancy that began August 1, 2011 and was set to end August 31, 2012. The Tenants were allowed to occupy the rental unit as of July 10, 2011 and were not charged rent for the month of July 2011. Rent was payable on the first of each month in the amount of \$1,600.00 and on or before July 10, 2011 the Tenants had made two payments towards the security deposit which totalled \$680.00 (\$400.00 + \$280.00). The Tenants were required to pay 100% of the costs of the utilities. The Tenants vacated the property on March 31, 2012, and although the parties conducted a physical walk through of the unit they did not complete move in or move out condition inspection forms.

The Tenants confirmed they did not provide the Landlord with a forwarding address until they listed it on their application for dispute resolution.

The Landlord is seeking \$1,722.07 which is comprised of the following:

- \$452.07 For the unpaid natural gas bill ending March 30, 2012. The Landlord advised the Tenant EH had agreed during the move out inspection that \$530.00 of their security deposit would be retained to be applied to this bill and the Landlord returned \$150.00 cash that day.
- \$200.00 For the cost of a lawnmower which she provided for the Tenants. She stated she purchased this lawnmower in August 2010 and she brought it to the Tenants after they moved into the unit so they could cut the lawn.
- \$1,600.00 For April 1, 2012 rent because the Tenants did not provide proper notice to end their tenancy. The Landlord confirmed her house was up for sale however it did not sell. She entered into a new tenancy on May 20, 2012 for a tenancy that began on June 1, 2012. She advised that she began to advertise the unit in mid April 2012 after she made sure the unit was ready for rent.

Tenant EH confirmed she agreed to have the balance of her security deposit used towards the natural gas bill. She also confirmed receipt of \$150.00 as partial refund of their security deposit on March 31, 2012.

The Tenants deny taking the Landlord's lawnmower. They claim they left it inside the unlocked shed in the backyard of the rental property. During the hearing I attempted to call a neighbour to the rental property, at the Occupant's request, as she said this neighbour knows where the Lawnmower is because she saw the Landlord give the lawnmower to the tenants on the other side of the rental building. This neighbour did not answer the call. The Landlord denies giving the lawnmower to anyone else.

The Tenants allege that they called the Landlord to complain about how rude her real estate agent was and that they were told to move out by April 1, 2012. The Landlord denied saying this and stated the Tenants called her on March 15, 2012 and told her they found a place and were moving out. The Tenants argued they told the Landlord they found a new place to live and that they would be moving out March 15, 2012 but the Landlord told them they would have to stay until March 31, 2012. They noted that they used the Landlord as a reference because she agreed to have them move out. The parties agreed that no written notice to end tenancy was provided by either party.

The Tenants are seeking the following:

- \$2,660.00 The Tenants confirmed they are seeking compensation for their moving costs because the real estate agent was rude, for cost of a new bed due to mold, and breaking the lease fee because the Landlord told them to move out early before the end of their tenancy. They are also seeking to recover double their security deposit as the Landlord did not return it to them.
- The Tenants are also seeking an order to have the Landlord comply with the Act to return their personal property which included a bike, and kitchen items that were left inside a drawer (bbq tools, knives, and a rolling pin). They noted that they had also left their car keys inside the unit and the Landlord had locked the door and left. They called the Landlord and she instructed the Tenants to go inside through the kitchen window to retrieve their possessions.

The Landlord denied that she told the Tenants they had to move out and she denied ever telling the Tenants they would be entitled to \$2,660.00 for having them move out before the end of their lease. The Landlord confirmed that she had already left town when the Tenant called to say she had left her car keys inside the unit. She noted that the kitchen window did not lock and that she told the Tenant it would be easy to gain access to her keys inside the unit through that window. She did not hear back from the Tenant so she assumed access was obtained and her keys were retrieved.

I asked the Tenants why they did not remove the rest of their items such as the bike and kitchen items, when they went back inside to retrieve their keys. Tenant EH stated that she was tired and her van was full so she did not think to remove those items.

The Landlord confirmed there were several bikes left in the back yard and that they are

still there. She also confirmed there were 4 cutting knives, bbq tongs, and a ceramic rolling pin left inside one of the drawers which she thought was garbage so she through them into the garbage.

The hearing time was about to expire and upon review of the testimony provided by each party I asked the Tenants if their Witness would be providing testimony that would be different than what has already been presented. The Occupant LH advised that their Witness would be providing testimony that confirmed things which had already been said. Therefore, I declined to hear from the Witness, in accordance with the *Residential Tenancy Branch Rules of Procedure* and the hearing was concluded.

### Analysis

When a party makes application for monetary compensation the party making the claim bears the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

### **Landlord's Claim**

Tenant EH confirmed she agreed to have the Landlord retain \$530.00 from her security deposit to put towards the final natural gas bill. The evidence supports the final bill was \$452.07. Accordingly the Landlord is entitled to retain the \$452.07 and is hereby Ordered to return the balance of **\$77.93 to the Tenants**.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the lawnmower went missing due to the Tenants' actions. In this case the only evidence is disputed verbal testimony, and considering that the shed where the lawnmower was stored is not locked, I find there to be insufficient evidence to prove the Tenants are liable. Therefore I dismiss the Landlord's claim of \$200.00.

In determining how this tenancy ended I find that on a balance of probabilities the parties entered into a verbal mutual agreement to end this tenancy on March 31, 2012, prior to the end of the fixed term. I make this finding in part because the evidence indicates the relationship between the real estate agent and the Tenants was

acrimonious; also the Tenants were initially going to vacate on March 15, 2012 and after a discussion with the Landlord they agreed to stay until March 31, 2012. Furthermore the Landlord agreed to provide a reference for the Tenants and the Landlord made no attempt to seek compensation for rent for the remainder of the fixed term.

As I have found that this tenancy ended by mutual agreement, I find that the Landlord is not entitled to compensation for April 2012 rent. Therefore I dismiss the Landlord's claim of \$1,600.00.

The Landlord has not been successful with her application; therefore she must bear the burden of the cost to file this application.

### **Tenants' Claim**

The Tenants seek \$2,660.00 as compensation for moving, for cost of a new bed due to mold, and breaking the lease fee and to recover double their security deposit as the Landlord did not return to them.

There was no evidence to prove: the Tenants were forced to move, that they purchased a new bed, or that they informed the Landlord of the presence of mold. The Tenants confirmed they did not provide the Landlord their forwarding address and that they had agreed to have the Landlord retain a portion of their deposit to cover the natural gas bill. Furthermore, I found that this tenancy ended based on a mutual agreement. Therefore, I find there to be insufficient evidence to prove the Tenants' claim and I dismiss their request for \$2,660.00.

The evidence supports the Tenants left 4 knives, a set of bbq tongs, and a ceramic rolling pin inside the unit which the Landlord discarded. Discarding the Tenants' property is a breach of Part 5 of the *Regulation* which speaks to the process which a landlord must follow when dealing with abandoned property.

Based on the aforementioned I find the Tenants have met the burden to prove they suffered a loss; however they have not provided receipts to prove the actual cost or age of these items.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Tenants are entitled to nominal damages for the loss of the items left inside the kitchen drawer in the amount of **\$30.00.**

The Landlord confirmed the Tenants left several bikes at the rental unit and that the bikes remain there. Therefore the Tenants are at liberty to contact the Landlord to make arrangements to pick up their bikes.

Conclusion

The Landlord's claim is HEREBY DISMISSED.

The Tenants have been awarded a Monetary Order in the amount of **\$107.93** (77.93 + 30.00). This Order is legally binding and must be served upon the Landlord.

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: July 19, 2012.

---

Residential Tenancy Branch