



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

These parties have been involved in two prior Dispute Resolution Hearings.

In March of 2011 the Landlord applied for loss of rental income, the cost of changing the locks and to retain the security deposit. The Landlord was not successful and was ordered to return the security deposit to the Tenant.

In October of 2011 the Tenant had still not received the deposit from the Landlord, applied for return of double the security deposit and was successful.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began in the fall of 2010, and the Tenant vacated the rental unit in January of 2011.

The Landlord is claiming for the removal of furniture and other property she alleges the Tenant left behind when he vacated the rental unit in January of 2011.

The Landlord had a new renter move into the rental unit on February 1, 2011. The Landlord testified she called the Tenant and left a message for him to remove the furniture.

The Landlord testified she had a different renter move into the rental unit in October of 2011.

The Landlord submitted two receipts in evidence for the removal of the furniture. One receipt is from a renovations company for \$392.00. I note this receipt is dated for April of 2012, and simply itemizes household items. It does not indicate what was done with the listed items. I also note there is no municipal dump fee charged.

A second receipt states it is for "Web Design" and is dated June 30, 2012, in the amount of \$50.00. This receipt indicates it is for garbage removal from the rental unit and to take 2 loads to Value Village and 2 loads to other places. It is marked paid in cash on August 1, 2012.

The Landlord has also supplied a letter from the renter who occupied the rental unit in October of 2011, who writes they request \$200.00 be taken off the rent to pay them for cleaning the rental unit when they took it over.

The Landlord testified she waited 17 months to file this claim because she alleges she was told by someone at the Branch that she had to hold onto the Tenant's property for six months before removing it.

The Landlord has provided photographs of the furniture she alleges was left behind by the Tenant.

In total, the Landlord claims \$550.00 for the removal of the Tenant's furniture.

In reply, the Tenant alleges that this claim from the Landlord is simply in retaliation for his success in getting an award against the Landlord for the return of double the security deposit.

In evidence the Tenant provided written submissions that the Landlord was ordered to pay him the return of the deposit in March of 2011. The Landlord did not pay this amount and the Tenant filed an Application and received an award for double the deposit in October of 2011.

The Tenant has provided evidence that the Landlord did not pay the Tenant the amount awarded and the Tenant had to pursue the enforcement procedures through the Provincial Court, which ultimately concluded when the Landlord was arrested for breaching an order to appear at a payment hearing.

As a result of the arrest, the Landlord had to appear in court and was ordered to pay the Tenant the amount awarded by July 31, 2012. According to the evidence of the Tenant the Landlord did not pay this on July 31, but waited until early August 2012.

In evidence the Tenant supplied a copy of an email he sent the Landlord on January 12, 2011. The Tenant wrote the Landlord explaining he was ending the tenancy. The email included the following statement,

“I am leaving the majority of furniture I’ve collected upstairs (entertainment center, couch, and chair) for both [two other renters living in the rental unit], and whomever the new tenant is.”

[Reproduced as written.]

The Landlord replied later that same day, and said the following regarding the furniture:

“For the furniture, you are free to bring with you if needed, and thanks for the leadership during the past four months.”

[Reproduced as written.]

The Tenant testified that the issue of the furniture was not raised by the Landlord in either of the first two hearings in this matter.

The Tenant further testified that none of the furniture appearing in the photographs provided by the Landlord is his, with the exception of the TV stand. The Tenant further testified that none of the garbage shown in the photographs was his either.

### Analysis

Based on the testimony, evidence, photographs, and on a balance of probabilities, I find that the Landlord’s Application must be dismissed without leave to reapply for the following reasons.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, here the Landlord, 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.

In this instance I find the Landlord has failed to prove the Tenant breached the *Act* or tenancy agreement, as I find the Landlord agreed in writing with the Tenant as to the disposition of the furniture at the end of the tenancy. The Tenant informed the Landlord he was leaving certain items there for the other renters and the Landlord agreed to this.

Furthermore, there were at least three other renters who had possession of the rental unit between the time the Tenant vacated the rental unit and the time the Landlord brought this claim. On a balance of probabilities, I find it is just as likely the items were left behind by one or more of these people.

I further find that much of the Landlord's evidence lacked credibility; in fact to the extent much of it could not be relied on. For example, the Landlord testified under affirmation that she was informed by the Branch to hold the Tenant's property for six months. In fact, the regulation to the Act only requires the Landlord to store the Tenant's furniture for 60 days (section 25 of the regulations) and this only applies in instances where the Tenant has abandoned the rental unit. Here the Tenant did not abandon the rental unit. He told the Landlord he was leaving and there was furniture being left for the other renters. The Landlord agreed to this in writing. More importantly, I find it unlikely the Landlord would be told to hold onto the furniture for six months by the Branch when the law they advise on only requires it to be held for 60 days.

For all the above reasons, I find the Landlord's Application must be dismissed without leave to reapply.

### Conclusion

The Landlord failed to prove her claim against the Tenant. The Landlord's Application is dismissed without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 22, 2012.

---

Residential Tenancy Branch