



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the conference call hearing and each gave affirmed testimony. The landlord also provided an evidence package prior to the hearing to the tenant and to the Residential Tenancy Branch. Each of the parties called witnesses, and the parties were given the opportunity to cross examine each other and the witnesses on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on August 15, 2012 for the monthly rent of \$2,200.00 payable in advance on the 15<sup>th</sup> day of each month. On July 23, 2012 the landlord collected a security deposit from the tenant in the amount of \$1,100.00 which is still held in trust by the landlord. The tenant never moved into the rental unit. The rental unit is a house with property suitable for horses or other livestock and other tenants also reside on that property.

The landlord further testified that on August 8, 2012 the tenant left a letter inside the rental unit saying that the tenant had changed her mind and was not going to rent the rental unit. The tenant had moved hay onto the property and some belongings into the house the week prior.

The landlord had not yet removed the advertisement from Craigslist, an on-line advertising site, from before the rental had been agreed on, but the landlord updated it and the rental unit was re-rented for September 1, 2012. The landlord claims half a month's rent from the tenant. The landlord received the security deposit and a cheque for half a month's rent from the tenant but didn't cash the rent cheque.

During cross examination the landlord was asked if the landlord had told the tenant that there were gates for the property somewhere, to which the landlord responded that the tenant had been told that previous tenants took the gates.

The landlord's witness testified that he completed a restoration to the ensuite in the rental unit and the repairs were completed by August 15, 2012. The witness noticed on or about August 7, 2012 that the tenant's lawn furniture and other belongings were removed but the witness does not recall the date for sure. The witness noticed that the items were there the day before.

The tenant testified that the property was viewed on July 21, 2012 and the security deposit was paid to the landlord. The landlord told the tenant the landlord would be calling the tenant's current landlord for a reference, but the tenant asked the landlord to wait to give the tenant an opportunity to contact the current landlord. The tenant did so and then the landlord called the tenant stating that the landlord wanted to meet the tenant's foster child. The tenant would have backed out of the agreement at that time because a foster child should not affect a tenancy and the tenant was concerned about the appearance that the landlord was prejudiced about the foster child, but the tenant had already told the current landlord that the tenant was moving out.

The tenant testified that there wasn't alot of stuff moved onto the property; hay, a trellis and horse blankets, however the tenant was mislead by the landlord. Right after the tenant had given the current landlord notice to end the tenancy, this landlord wanted to meet the tenant's foster daughter. The parties met in a restaurant on August 7, 20102, and the landlord told the tenant that August 15, 2012 had to be the move-in date. The tenant was very upset and felt trapped because notice had already been given to move from the tenant's current rental unit. The tenant called the landlord later that day and explained the problem but the landlord simply replied, "I guess you're stuck between a rock and a hard place." Further, the landlord had told the tenant that there were gates and most importantly the landlord told the tenant that the tenant could move in on

September 1, 2012 and then changed the date to August 15, 2012. The tenant asked the current landlord if the tenant could withdraw the notice to end the tenancy but the landlord didn't agree stating that the rental unit was being shown and the landlord would get more rent money for it. However, on August 7, 2012 the current landlord agreed to allow the tenant to stay.

The tenant would have terminated the agreement earlier with this landlord if the tenant's current landlord would have consented to withdrawing the tenant's notice to end the tenancy. However, it didn't appear that the bathroom in the new rental unit would be ready and the tenant had called the landlord stating that the sheds were full of manure. The landlord responded that the tenant had to store hay for the tenant's horses in those sheds. Further, there was no water for the horses; the landlord had told the tenant that previous tenants used rain water for their llamas and other tenants told the tenant that there were water problems and that they had to wash clothes in the tenant's rental unit because their washer wasn't useable due to the water problems. The tenant does not know what the water problems were but the tenant was afraid of having to buy water for horses. The water has a filter system and the landlord had told the tenant that someone would have to put chemicals in the system about once per month, but that the water was not good for horses. It is usual to have a separate tap for the well water.

The tenant had also asked the landlord to remove large dead trees from the property, and at first the landlord agreed and then said that it would eventually happen.

The landlord had also told the tenant that there were gates on the property but then later told the tenant that there weren't any and that the previous tenants must have taken them when they moved out. The landlord knew about the tenant's 4 horses.

The tenant's witness testified to being a short-term room-mate of the tenant and that a pile of dirt had been moved on the property and the landlord had stated that the tenant shouldn't worry about it; the gates were around somewhere. The witness also testified that the tenants' current landlord had agreed on August 7, 2012 that the tenants could stay in their current rental unit. The tenants took a letter addressed to this landlord to the rental unit and intended to call the landlord but the landlord called the tenants first and was not rational. She had lied a lot during that conversation about what was contained in the tenants' letter. The landlord was upset, and the tenants had just arrived back home. The landlord yelled at the tenant stating that the tenants were never told that the gates were there, or that there was anything wrong with the water, however on July 21, 2012 the landlord told the tenants they had to drink bottled water.

The witness also stated that there were 3 sheds on the property that had been used for the llamas of previous tenants. Each shed had about 1 ½ feet of manure on the floors.

The tenants called the landlord who agreed to pay for half of the clean-up costs, but the sheds were too short for a horse shelter and health hazard because the manure was hard as rock. The witness did not look inside the shed when the parties first viewed the property.

The other tenant on the property told the witness that hay couldn't be stored in certain places due to that tenant's allergies. The landlord stated that the insurance company had problems with the storage of hay and the tenant would have to use the sheds for hay but they were full of manure.

The witness also testified that the ensuite had been taken apart and another tenant was to fix it but he was away for a week.

The landlord was permitted to call a witness in rebuttal, who is another tenant on the property. That witness testified that the water on the property is fine and that the tenants and horses drink it. The tenant didn't use the washer in the other tenant's house, and stated, "Everything is perfect, and any issues we have, the landlord deals with it." The witness also testified that the witness built a barn, and didn't have a washer at their rental unit at the time the tenant viewed the rental unit. No one had lived in the rental unit for awhile. The witness added salt to the water system and all is fine.

### Analysis

It is clear that the parties entered into a tenancy agreement by virtue of the payment of a security deposit. At that point, the landlord told the tenant that the tenancy would have to commence earlier than the parties had originally agreed. The tenant could have refused but felt stuck because notice had already been given to the current landlord. Once the current landlord agreed that the tenant could withdraw the notice to end tenancy, the tenant attempted to end the contract with the new landlord, but was not successful. Further, the tenant had moved items onto the rental property and then moved them off.

The *Residential Tenancy Act* states that a landlord must prepare in writing every tenancy agreement entered into. The *Act* places the onus on the landlord. If the landlord had complied, there would be no issue with respect to what facilities were included on the rental property and the commencement date of the tenancy.

With respect to the tenant's claim that the rental unit and rental property were not ready by one week prior to the commencement of the tenancy, I find that the tenant has prematurely considered the rental unit not inhabitable. The tenant testified that within one week of moving in, the bathroom was not done and the landlord had reneged on

the agreement respecting hay and gates. The landlord had originally told the tenant where hay could be stored and then changed the rules. Further, the *Act* states that a landlord must provide a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant, and a landlord's obligations in that regard apply whether or not the tenant knew of a breach by the landlord at the time of entering into the tenancy agreement. In this case, the rental unit includes farm-type rental property for horses or other livestock. Whether or not the landlord had an obligation to clean the manure out of the sheds if the landlord expected the tenant to house horses or hay in those sheds, the tenant testified that the landlord had agreed to pay for half of the cleaning costs, and the landlord did not dispute that testimony, but no one testified as to what those costs would be, nor do I have any evidence before me to suggest that the landlord would not have paid for cleaning out the sheds.

The landlord also testified to having a cheque from the tenant for half a month's rent but hasn't cashed it.

In the circumstances, I find that the parties entered into a tenancy agreement for a tenancy to begin on August 15, 2012. I further find that the tenant prematurely considered the rental unit would not be ready to move into by August 15, 2012, and the landlord is entitled to half a month's rent.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$1,100.00 and I grant the landlord a monetary order in the amount of \$50.00 for recovery of the filing fee.

I further order the landlord to destroy the tenant's cheque in the amount of \$1,100.00 that is in the landlord's possession for half a month's rent, or return it forthwith to the tenant.

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: November 09, 2012.

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Residential Tenancy Branch