



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, RPP, FF

### Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for unpaid rent and utilities; damage to the rental unit or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for return of the security deposit and return of personal property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

During the hearing I confirmed the documents and photographs served upon the other party and I have excluded the evidence not served upon the other party from consideration in reaching this decision.

Two co-tenants were identified on each Application for Dispute Resolution; however, the tenancy agreement was signed by only one tenant. I have amended the Applications to exclude the respondent that was not privy to the tenancy agreement.

It should also be noted that questions asked of the landlord and the landlord's testimony and responses were provided by way of an interpreter supplied by the landlord.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent and utilities from the tenant for the month of October 2012?
2. Has the landlord established an entitlement to compensation for damage and garbage removal?
3. Should the security deposit be returned to the tenant or retained by the landlord?
4. Is it necessary or appropriate to issue orders for return of the tenant's personal property?

## Background and Evidence

The parties provided the following undisputed information and evidence:

- A six month fixed term tenancy commenced May 1, 2012 and was set to expire October 31, 2012.
- The tenancy agreement provides that at the end of the fixed term the tenant would be required to vacate the rental unit.
- The tenant paid a security deposit of \$1,200.00.
- The tenant was required to pay rent of \$2,400.00 plus a flat rate of \$75.00 for water and sewer to the landlord on the 1<sup>st</sup> day of every month.
- The landlord issued a letter to the tenant on September 6, 2012 reminding the tenant that the tenancy was set to expire October 31, 2012 and that vacant possession was expected on or before October 30, 2012.
- The tenant put a stop payment on the rent cheque for October 2012.

I was provided various dates as to when the tenant vacated and left the keys to the rental unit. The landlord submitted that the tenant had moved out by October 8, 2012 but was notified that the keys were left at the property by the landlord's son on October 10, 2012. The tenant submitted that he had moved out on October 5, 2012 and left the keys in the mailbox on October 6, 2012 as the landlord would not attend the property to participate in a move-out inspection and he was instructed to leave the keys in the mailbox.

The landlord applied for dispute resolution on October 9, 2012 indicating the tenant had moved out October 8, 2012 and the landlord was seeking to recover unpaid rent and utilities of \$2,475.00 for the month of October 2012. Also included in the landlord's claim was \$200.00 for unspecified damage and garbage removal.

In the landlord's subsequent evidence package the landlord indicated that there was a damaged light fixture. Although a move-in inspection report was prepared, the landlord did not prepare a move-out inspection report. I was provided a photograph of what appears to be a light fixture with a missing lens cover. I was also provided a rather dubious hand written document dated November 2, 2012 indicating a claim or charge of \$100.00 for garbage removal and \$100.00 for a light fixture. The document does not clearly identify who prepared the document, does not indicate that payment was received, or any other details such as the type of light fixture that was supplied.

The landlord did provide photographs of items in the driveway, backyard, and shed in support of the landlord's claim for garbage removal. The tenant confirmed that those items were his possessions for which he was seeking return by way of his Application.

The tenant did not specify the items for which he was seeking return by way of his Application; however, during the hearing the tenant pointed to the landlord's photographs and requested return of the following items:

- Couch and TV left in the carport;
- Children's green plastic sandbox left in the backyard; and,
- Mattress and shelving unit left in outside storage shed.

The tenant explained that he left these items behind after he left the keys at the rental unit as he no longer had use of a truck to move these items.

The landlord stated that she did not notice a sandbox and that the other items were disposed of because the landlord considered them to be abandoned. The landlord also stated that many of these items were already damaged or broken. The tenant stated that he thought the landlord would have contacted him before disposing of his possessions. However, the tenant did not indicate he made efforts to contact the landlord about his possessions left at the property.

With respect to the landlord's claim for unpaid rent the tenant submitted that in negotiating the tenancy the tenant was of the impression the lease would be renewed at the end of the fixed term. Upon receiving the landlord's letter of September 6, 2012 the tenant proceeded to look for new accommodation for him and his family and he secured a new home for October 1, 2012. The tenant spoke with the landlord's son, due to the language barrier with the landlord, and informed the landlord's son that he would try to move out before October 1, 2012. The tenant further stated that he told the landlord's son that it may not be possible to be completely moved out by October 1, 2012 and that the landlord's son seemed unconcerned about this.

Included in the documentary evidence was a text message sent to the landlord's son. In the text message it indicates the tenant would be out by "the 15<sup>th</sup>" as they would start moving out on the 3<sup>rd</sup>. The text message also indicated that it was possible the tenant would be out by the 8<sup>th</sup> of October.

The tenant acknowledged that he was not given any indication that October's rent would be waived by the landlord. Rather, the tenant's position was that he vacated the

property in early October 2012 and the landlord started renovations so that the landlord could move into the property and the landlord is not entitled to rent for the entire month. The tenant submitted that he observed construction activity at the property before October 15, 2012.

The landlord acknowledged that painting activity was taking place at the property starting October 25, 2012.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### ***Landlord's Application***

Upon review of the tenancy agreement and by way of the landlord's letter of September 6, 2012 I find it is clear that the tenant was bound by a fixed term tenancy set to expire October 31, 2012 and that under that fixed term agreement the tenant was to pay rent on the first day of every month up to and including the month of October 2012. I find insufficient evidence that the landlord otherwise waived entitlement to receive rent for October 2012. Therefore, the tenant did not have a right to put a stop payment on the rent cheque for October 2012 and by doing so the tenant breached the tenancy agreement and the Act.

While I appreciate the tenant made a decision to secure another suitable home for his family starting October 1, 2012 in the best interests of his family's needs, his decision to secure a new home before October 31, 2012 does not form a basis to exempt him from his obligations under the tenancy agreement or the Act. Therefore, the tenant's decision to secure a new home for October 1, 2012 and vacate the rental unit in early October 2012 is a decision for which the tenant must bear the cost.

I find the landlord was within her rights to plan for use of the rental unit after the fixed term tenancy was set to expire and I find it unreasonable to expect the landlord should have or could have changed her renovation plans or have re-rented the unit for three weeks before she was set to take possession of the house.

In light of the above, I award the landlord the unpaid rent for the entire month of October 2012, including the flat water and sewer charge that the tenant was required to pay under the tenancy agreement, for a total of \$2,375.00.

As I have found the landlord entitled to unpaid rent and utilities, I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord.

While I accept that the tenant left possessions at the property and the tenant may have damaged a light fixture I find the landlord's documentation to support the claim for \$200.00 to be lacking veracity and I am not satisfied the landlord actually suffered a loss of \$200.00 as claimed. Rather, I find the landlord's ability to access the property and paint it before November 2012 to be sufficient compensation for having to handle the above issues. Therefore, I make no further award to the landlord for damage or garbage removal.

### ***Tenant's Application***

The security deposit has been awarded to the landlord in partial satisfaction of unpaid rent as stated above. Therefore, I deny the tenant's request for its return.

As the landlord claims she no longer has the tenant's possessions I make no order for their return. Rather, the tenant's remedy is monetary compensation and the tenant is at liberty to file another Application for Dispute Resolution seeking compensation from the landlord if the landlord violated the abandoned property regulations. I encourage the tenant to familiarize himself with the abandoned property rules contained in the Residential Tenancy Regulations prior to filing an Application for Dispute Resolution.

### ***Filing fee and Monetary Order***

I find the landlord's application to have more merit and I award the filing fee to the landlord. I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent and utilities – October 2012

\$ 2,475.00

Filing fee	50.00
Less: security deposit	<u>(1,200.00)</u>
Monetary Order	\$ 1,325.00

The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,325.00 to serve and enforce as necessary.

As the landlord is no longer in possession of the tenant's personal property I make no order for return of such. The tenant remains at liberty to file an Application for Dispute Resolution seeking monetary compensation from the landlord if the landlord violated the abandoned property rules. The parties are encouraged to familiar themselves with the abandoned property rules contained in the Residential Tenancy Regulations.

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 08, 2013.

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Residential Tenancy Branch

