



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for compensation for damage or loss under the Act.

Both parties appeared, gave 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 at the hearing.

### Preliminary Issue – November 14, 2012

During the hearing the landlords stated they were unable to serve the tenants with their evidence as the address on the tenants' application is the not an address of service.

The tenants agreed the address provided in their application is not their service address. As a result, this matter was adjourned for the purpose of the landlord to serve their evidence package on the tenants at the address provided at today's hearing.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for loss or damage under the Act?

### Background and Evidence

The tenancy began on July 1, 2011. Rent in the amount of \$575.00 was payable on the first of each month. A security deposit was not paid by the tenants. The tenancy ended on October 10, 2012.

### November 14, 2012

The tenants testified that on September 23, 2012, they were given 48 hours to move from the rental unit, as the bylaw enforcement department required the landlords to comply their bed and breakfast license.

The tenants testified the landlord did not give them written notice and they refused to pay the landlord any rent for October 2012.

December 20, 2012

The tenants testified that on September 23, 2012, they were give 48 hours to move from the rental unit, however, they were not sure why.

The tenants testified that they began looking for new accommodation and immediately started removing their belonging from the 250 square foot room they rented. The tenants stated that every day over a three week period they move at least one or two truckloads of their belonging to a storage facility.

The tenants testified on October 10, 2012, the police attended to the property at their request and they were informed by the police to remove that was left of their belongings and not come back to the property and any items left behind would be considered abandoned.

The tenants testified they left the property as directed by the police and there were about three truckloads of items left behind. The tenants stated they telephoned the landlords later that day and asked if they could retrieve the balance of their items and it was agreed the landlord would place their belongings in the shed by the road for the tenants to retrieve.

The tenants testified that within two hours they attend, accompanied by friends with two trucks and one car to retrieve their belongings.

The tenants testified that after they went through their belongings there were a large amount of items missing, and some items were damaged. The tenants are seeking compensation for the missing and damaged items. Filed in evidence are photographs of damaged items.

The landlords testified they never gave the tenants 48 hours to move. The landlord stated on September 23, 2012, it came to their attention that the tenants were growing marihuana and they told the tenants the plants had to be removed and if they wanted to grow marihuana they would need to find new accommodation as they were not going to allow marihuana to be grown on their property.

The landlords testified the tenants told them that they would be moving and on September 23, 2012, the tenants started removing the hydroponic equipment from the rental unit. Filed in evidence is a photograph.

The landlords testified the tenants did not provided them with written notice to end tenancy and were still residing in the unit on October 1, 2012 and were required to pay rent, however, the tenant refused to pay rent. The landlords stated the tenants were planning to abandon the unit without paying rent and when the police attended at the

tenants request on October 10, 2012, the police informed the tenants to remove the balance of their belongs and any items left were deemed abandoned by the tenants.

The landlords testified the tenants called shortly after they left the property and asked if they could come and retrieve the balance of their items left behind. The landlords stated he agreed to move the items to the shed near the road for the tenants to retrieve.

The landlords testified the tenants items were all removed and placed in the shed and two or three hours later they watched the tenants arrive with two trucks and one car to retrieve their belongings and were gone within 15 minutes. The landlords' deny damaging or keeping any of the tenants' belongings.

The landlords' witness testified that he is a mechanic and attends to the landlords' property to work on vehicles and during this time he witnessed marihuana plants that the tenants were growing and also saw the tenants removing hydroponic equipment from the rental unit.

The landlords' witness testified he was at the property on October 10, 2012, when the police attended and after the police and the tenants left, he saw the landlord removing the belongings of the tenants into the shed.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenants have the burden of proof to prove a violation of the Act by the landlords and a corresponding loss.

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.

The evidence of the tenants was the landlord provided them with 48 hours to leave the rental unit because the landlord was required to comply with their bed and breakfast licensing. However, on December 20, 2012, the evidence of the tenants was they were unsure as to why the landlord was ending the tenancy, which contradicts their original testimony. Further, the fact the tenants were still residing in the rental unit three weeks later does not support the tenants position that they given within 48 hours to leave the rental unit.

The evidence of the landlords was on September 23, 2012, the tenants were ordered to remove their marihuana plants and they told the tenants if they wanted to grow the narcotic then they would have to find new accommodations. The evidence of the landlord was the tenants stated they would be moving out of the rental unit, which is supported by the action of the tenant immediately removing their belongings and continued moving their belongings over a three week period. The evidence of the landlords was the tenants' did not pay rent for October 2012, and they believed the rental unit was going to be abandoned. By the actions of the tenant not paying rent and removing their belongings over an extended period of time, I find it was probable that the tenants were planning to abandon the rental unit.

However, On October 10, 2012, the parties agreed the police attended the property and ordered the tenants to remove what was left of their belongings any items left behind would be deemed abandoned. The tenants accepted this and left the property leaving some items behind. I find the tenancy ended when the tenant left the property on October 10, 2012.

The evidence of the parties was the tenants were given permission by the landlord to attend later that day to the property to remove the balance of items left behind and it was agreed that the landlord would remove those items to be stored in the shed at the top of the road.

The evidence of the tenants was a large amount of items were missing or damaged. In this case, the tenants have been moving at least two or three truckloads of belongings each day for three weeks to a storage facility. The evidence of the tenant was there were approximately 3 truckloads of belonging left behind. The evidence was three vehicles attended and remove the items from the shed.

The evidence of the landlord was all items were returned and in the condition that he found them in the unit. The landlord denies destroying or keeping any of the tenants' belongings.

In this case, both parties have provided a different version of events. The tenants have submitted photographs, however, the photographs were taken after the items were

removed from the property by the tenants and their friends. The landlords deny damaging any of the tenants' property or keeping any items. I find in the absence of any other witnesses, such as the tenants' friends that were at the property on October 10, 2012 or any other documentary evidence, such as photograph to prove the condition of items prior to tenancy ending, and photographs taken of the items when stored in the shed, the tenants have failed to prove that a loss or damage exists due to the actions or neglect of the landlord violating the Act. As a result the tenants' application is dismissed.

### Conclusion

The tenants' application is dismissed.

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 7, 2013.

---

Residential Tenancy Branch

