



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and a monetary order for a return of his security deposit and pet damage deposit.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

At the outset of the hearing, the evidence was discussed. The tenant's evidence, a one page document, was submitted with his application for dispute resolution, which the landlord acknowledged.

The landlord's said she delivered her evidence to the address listed on the tenant's application; however no one lived at that address as it was being renovated. The tenant confirmed that he no longer lived at that address.

I therefore accepted the landlord's documents into evidence as she did not have another address at which to deliver her evidence to the tenant.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and a return of his security deposit and pet damage deposit?

### Background and Evidence

The tenancy agreement entered into evidence by the landlord shows that this tenancy began on June 15, 2011, monthly rent was \$500.00, and the security deposit was \$250.00. The parties also agreed that the tenant paid a pet damage deposit of \$250.00.

The tenant said he vacated the rental unit in late November 2011, and the landlord contended that the tenancy ended in early December 2011, after issuing the tenant a 10 Day Notice to End Tenancy for Unpaid Rent after failing to receive rent for December 2011.

The tenant confirmed that he has never provided the landlord with a written forwarding address.

The tenant's monetary claim is in the amount of \$4109.98, for certain items of personal property as assessed by the tenant and listed in his monetary order breakdown sheets.

The tenant submitted that as he was suffering from mental health issues and drug addiction, he abandoned the fully furnished rental unit containing all of his belonging and other personal property, including furniture, musical instruments, clothing, and electronics.

The tenant said that although when he vacated the rental unit and moved out of town, he did come back into town in May 2012 and spoke with the landlord about his personal property and the two deposits.

According to the tenant, the landlord was not receptive to his requests.

In response, the landlord submitted written evidence which showed a receipt for removal of items, in December 2011, a receipt from suite and rug cleaning, dated December 30, 2011, a receipt for the items removed from the suite and cleaning of the suite, with an attached inventory of what appears to be the larger items, a receipt for garbage hauling, and newspaper classified advertisements, naming the tenant, the address, and notification that the "furnishings and household items" belonging to the tenant would be disposed of within 30 days from January 13, 2012, unless claimed.

The landlord said she has not returned the deposits as the tenant never provided a written forwarding address.

### Analysis

Based on the relevant oral and written 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 claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In the case before me, the undisputed evidence shows that the tenant abandoned his personal property when he vacated the rental unit in the time period in question, late November or early December 2011, and has never provided the landlord with a written forwarding address.

Under Residential Tenancy Branch Regulation #25, if a tenant has abandoned personal property at the end of the tenancy, the landlord must:

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

Prior to disposing of the items, the landlord must give notice of the disposition and publish the notice in a newspaper published in the area in which the residential property is situated.

I find the landlord supplied sufficient documentary evidence that she complied with the requirements of the Regulations, when she showed that the personal property was collected and stored for at least 60 days, along with an inventory of any item thought to be in excess of \$500.00.

I also find the landlord supplied sufficient documentary evidence that she published notice of the disposition of the personal property in the proper format as required by the Regulations.

I therefore dismiss the tenant's monetary claim of \$4109.98 for the value of his personal property.

As to the tenant's claim for a return of his security deposit and pet damage deposit, section 39 of the Act states that if a tenant fails to provide a written forwarding address within a year of the end of the tenancy, the landlord may keep the security deposit and pet damage deposit and the tenant's rights to the return of the deposits is extinguished.

In the case before me, the tenant acknowledged never providing a written forwarding address to the landlord. Even if I consider that the tenant's application for dispute resolution provided a written forwarding address, the application made on January 17, 2013, was over a year after the tenancy ended.

I therefore dismiss the tenant's request for a return of his security deposit and pet damage deposit as the landlord has established that she has the right to retain the deposits through the extinguishment of the tenant's right to a return of the deposits.

### Conclusion

Due to the above, my finding that the landlord has complied with her requirements under the Residential Tenancy Branch Regulations in disposing of the tenant's personal property and that the tenant failed to comply with his requirement to provide the landlord a written forwarding address, I dismiss the tenant's application for a monetary order for the value of his personal property and a return of the security deposit and pet damage deposit.

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: April 11, 2013

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Residential Tenancy Branch