



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$2083.02.

The tenant's application is a request for a monetary order for \$4250.00 and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The landlord testified that:

- The tenants failed to show up for the arranged moveout inspection on February 28, 2013 and therefore it's her understanding that they've waived their right to the return of their security deposit. She therefore requests an order to retain the full security deposit.
- The tenant had keys to many of the units of the rental property and she is not sure if all those keys were returned or whether the tenant still had some and therefore she decided to change the locks on all the units and believes the tenant should pay for changing those locks.

- She also believes the tenant should be paying utilities through to approximately March 13, 2013, as the utilities were just charged as they came in and therefore the tenant was not charged utilities for the first 13 days of her tenancy.
- At the end of the tenancy a weedeater and extension cord were missing and she believes that they were taken by the tenants.
- There was also a rusty propane BBQ and some wood and junk left beside the house, plus she had to deal with the garden boxes in the yard that she believes the tenant has the responsibility to take care of.

The landlord is therefore requesting a monetary order as follows:

Retain the full security/pet deposit	\$1050.00
Cost of changing locks	\$165.09
Outstanding utilities	\$632.83
Cost of weedeater an extension cord	\$123.15
Garbage removal	\$50.00
Filing fee	\$50.00
Registered mail	\$11.95
Total	\$2083.02

The tenant testified that:

- She believes the landlord should be returning their security deposit double, because the landlord failed to do the moveout inspection report as required at the end of the tenancy, and therefore did not have a right to claim against the security deposit. Her co-tenant had made arrangements with the landlord to do a moveout inspection on the 28th of February 2013, however they found out that the landlord was supposed have made arrangements for the moveout inspection with them by registered mail and therefore they decided not to go to the moveout inspection as the landlord had not followed the Residential Tenancy Act.
- She does not believe they should be paying for changing the locks to the rental property, as all keys that she held for the property were returned to the landlord other than keys that had been given to the upstairs tenants for their use to their own suite. They do not hold any keys belonging to the landlord or the landlord's rental property.
- They have already paid the landlord for the outstanding utilities up to the date that they moved out of the rental unit on the 4th of February 2013, and she does not believe they should have to pay anything further. They paid the landlord \$464.72 by cheque which the landlord has already cashed.
- All the tenants of the rental property have access to the area where the weedeater an extension cord were kept and therefore it could have been removed by anyone. They never removed a weedeater or extension cord when they vacated the rental property.
- The barbecue that was left of the rental property was not theirs, it belong to another tenant and therefore they did not take it when they vacated. The garden boxes were not their responsibility and in fact the landlord had told them they

couldn't use the garden boxes. The wood that was left behind was the landlords wood from a picnic table that had been in poor shape and the landlord had agreed to allow them to disassemble it.

- They also believe that the landlord should be paying them the equivalent of one month rent for loss of quiet enjoyment, because the landlord did not deal with noise issues from the tenants in the suite above them. They made many complaints to the landlord however those complaints were not taken seriously. No complaints were ever put in writing but there were many complaints made verbally.

The tenants therefore believe that the landlords claim should be dismissed in full, and that the landlord should pay as follows:

Double security deposit	\$2100.00
Loss of quiet enjoyment	\$1700.00
Filing fee	\$50.00
Total	\$3850.00

The amount is different than on her application for dispute resolution, because she made a mistake on the amount of security deposit she thought was held.

### Analysis

It's my finding that the tenants have waived the right to the return of their security deposit as the tenants failed to participate in the prearranged moveout inspection.

The tenants made arrangements by e-mail with the landlord to do a moveout inspection on February 28, 2013 and even sent a copy of an e-mail to the landlord by registered mail confirming the date.

Therefore it is my finding that the landlord did comply with the Residential Tenancy Act, and had accepted the tenants e-mail as confirmation of the date that the moveout inspection would be completed. It was the tenants that failed to participate.

I therefore will not allow the tenants claim for return of double the security deposit.

I also deny the tenants claim for loss of quiet enjoyment common as it is my finding that the tenants have not met the burden of proving that the landlord did not deal with noise complaints. Nothing was ever put in writing to the landlord, and therefore it is basically just the tenant's word against that of the landlord and that is not sufficient to meet the burden of proof.

I will not however allow the landlords claim for the cost of changing the locks at the rental property, as there is no evidence to show that the tenant did not return all the keys to the landlord at the end of the tenancy. Therefore if the landlord chooses to change the locks it is at her own expense.

I also disallow the landlords claim for the weedeater an extension cord, and for garbage removal. The landlord has admitted they the other tenants in the rental property have access to the area where the weedeater an extension cord were kept and there is no evidence to show that it was these tenants that remove those items. Further there is no evidence to show that the garbage left behind belonged to these tenants.

Therefore the only portions of the claim left is a claim for outstanding utilities, filing fees, and registered mail costs, however since the tenants have waived their right to return of the security deposit, the landlord gets to keep the deposit of \$1050.00 which exceeds the amount claimed for utilities, filing fees, and registered mail costs, and therefore I will not be issuing any further order for any outstanding utilities.

### Conclusion

The tenant's application is dismissed in full without leave to reapply.

As stated above, I find that the landlord has a right to retain the full security/pet deposit of \$1050.00. The remainder of the landlords claim is dismissed without leave to reapply.

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: May 13, 2013

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Residential Tenancy Branch

