



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DINOMITE PROPERTIES  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MND, MNR, MNSD, MNDC, LRE , FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for \$6,500.00 including rent owed, costs of removing and storing the tenant's possessions, repairs and cleaning.

The hearing was also convened to deal with an application by the tenant for \$4,000.00 in damages and an order to force the landlord to return the tenant's possessions.

The landlord and representatives of the tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issues to be Decided for the Tenant's Application**

Is the tenant entitled to monetary compensation for loss of possessions?

Should the landlord be ordered to return the tenant's property?

### **Issues to be Decided for the Landlord's Application**

Is the landlord is entitled to monetary compensation under section 67 of the *Act* for rent, loss of rent, repairs and cleaning?

### **Background and Evidence**

The landlord testified that the tenancy began December 7, 2012 with rent set at \$1,100.00 per month and a security deposit was paid in the amount of \$550.00.

The landlord testified that a previous dispute resolution hearing was held on April 23, 2013 and the landlord obtained an Order of Possession effective May 31, 2013 by mutual consent of both parties.

Evidence: Landlord's Claims

The landlord testified that the tenant failed to pay \$500.00 rent for the month of April 2013 and \$1,100.00 for May 2013 accruing rental arrears of \$1,600.00 and \$70.00 in parking.

The landlord testified that on May 17, 2013 the tenant was arrested and removed from the residence leaving possessions and occupants still in the suite. The landlord testified that an associate of the tenant advised the landlord that other people have keys to the rental unit and will likely steal the tenant's possessions while the tenant is being held in jail.

The landlord testified that on May 23, 2013, the police executed a search warrant and damaged the door. The landlord is claiming compensation for labour costs of \$267.50 to fix the door jamb, supplies costing \$277.31 and \$529.97 for repainting and drywall repairs.

Copies of invoices were submitted for the costs.

The landlord is also claiming the cost of replacing the lock, which had been changed by the tenant, in the amount of \$112.00. The landlord submitted a receipt for this cost as well.

The landlord is claiming \$150.00 for cleaning. An invoice for the cleaning costs was in evidence.

The landlord testified that, after the police intervention, the landlord concluded that the tenant had abandoned the suite and on May 25, 2013, removed the tenant's property for safe-keeping. The landlord testified that all items were inventoried and have been kept secure. The landlord is claiming the cost of the moving and storage in the amount of \$1,368.41.

The landlord testified that, although an associate of the tenant requested that all or some of the possessions be released, the landlord declined to release any items to the tenant's associate.

The landlord acknowledged that the tenant's associate returned with a notarized document giving the individual power of attorney to act on behalf of the tenant with the tenant's signed permission to retrieve the tenant's property being held by the landlord.

However the landlord is still storing this property and hopes to be reimbursed before it is released.

In addition to the above, the landlord is seeking compensation of \$550.00 for the loss of rent for half a month in June 2013, during which period the unit was not rentable due to repair work.

In regard to the rent being claimed by the landlord, the tenant's representative agreed that the \$500.00 was owed for April 2013, but felt that the rent being claimed for May 2013 should be pro-rated because occupants permitted to reside in the unit by the tenant until the tenancy ended on May 31, 2013, were wrongfully evicted and locked out of the suite by the landlord, while the tenant still had legal possession of the suite.

The tenant's representative testified that, after the tenant was arrested, the landlord locked other occupants out of the suite and refused to let them retrieve their possessions. The tenant's representative testified that, when the police executed a search warrant, they battered down the door without waiting for the occupants to open it. The tenant's representative stated that the tenant should not be held responsible for the cost of the damage the door.

With respect to the claimed costs for cleaning, the tenant's representative stated that the landlord took illegal possession without due process and deprived the tenant of the opportunity to clean and repair the suite. According to the representative, had they not been locked out by the landlord, the unit would have been cleaned. The tenant is disputing the charges.

The tenant's representative stated that, by immediately concluding that the suite and the property were "abandoned" by the tenant, the landlord contravened provisions of the Act and regulations.

In regard to the landlord's confiscation of the tenant's property, the tenant's representative stated that they advised the landlord that they had legal authorization to act on the tenant's behalf. According to the tenant, if the landlord had not confiscated the property and refused to release it, the associate could have made arrangements to remove the furnishings from the unit without delay, at no cost to the landlord.

The tenant's representative testified that, in fact, arrangements to vacate as of May 31, 2013, were already in place. The tenant's representative pointed out that the landlord cleared the rental unit of the tenant's personal possessions on May 25, 2013, despite the fact that the parties had previously agreed that the effective date for ending the tenancy was May 31, 2013. The representative pointed out that this is documented in

the decision from the previous hearing confirming that the Order of Possession, which both the tenant and the landlord had consented to, was not effective until May 31, 2012.

The tenant's representative testified that the landlord willfully ignored the authorization granted by the tenant to allow one of his associates to act on his behalf to retrieve his property. In fact, according to the tenant's representative, the landlord attempted to extort money from the tenant in exchange for releasing the tenant's items being wrongfully held.

The tenant's representative stated that the tenant should not have to pay the \$1,368.41 moving and storage costs because the landlord breached the Act by taking the items in the first place and the landlord is responsible for incurring the costs unnecessarily.

With respect to the partial loss of rent for June 2013, being claimed by the landlord, the tenant's representative stated that the repairs could have been done within a short period and the landlord should have already had a new tenant lined up in anticipation to the agreed-upon date that the tenancy was going to otherwise end. The tenant disputes this claim.

#### Evidence: Tenant's Claims

The tenant's representative stated that the monetary claim is based on wrongful eviction as the landlord locked the tenant out of the rental unit on May 23, 2013, without due process. The tenant is claiming a rent abatement for May 2013.

The tenant is also claiming the value of the confiscated items and requested an order that the landlord release the items wrongfully seized.

#### Analysis

In regard to rent claimed by the landlord for the month of April, I note that section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

I find that the tenant was in arrears for rent in the amount of \$500.00 for April 2013 and \$1,100.00 for May 2013, plus \$70.00 for parking. I find that the landlord is entitled to \$1,670.00 for rent and parking fees.

With respect to the landlord's claims for damages, I find that It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable measures to address the situation and to mitigate the damage or losses that were incurred.

I find that the door to the rental unit was in good condition when the tenant first took occupancy, but was damaged during the tenancy. I find that the damage that occurred to the landlord's door was directly related to the tenant's occupancy and the landlord should not have to incur the cost of the repairs. Accordingly I grant the landlord labour costs of \$267.50 to fix the door jamb and \$277.31 for the supplies, for a total of \$544.81 for the door damage.

In regard to the \$529.97 claimed for the cost of repainting and drywall repairs and the \$150.00 claimed for cleaning, I accept that the landlord did pay these amounts. However, because the tenancy was terminated not in accordance with the Act, and the occupants were barred from accessing the unit from May 23, 2013, to the end date of the tenancy, I find that the tenants were denied the opportunity to complete the final clean-up and make repairs.

I find that the landlord's claims for the repairs and cleaning must therefore be dismissed.

With respect to the cost of replacing the lock, which had been changed by the tenant in violation of the Act, I find that the landlord is entitled to be compensated \$112.00.

In regard to the landlord's claim for loss of rent of \$550.00 for one-half a month, I find that this claim was not sufficiently supported by the evidence to meet the landlord's burden of proof, and must therefore be dismissed.

Given the above, I find that the total amount of compensation to which the landlord is entitled is \$2,326.81, including \$1,675.00 for rent and parking, \$544.81 for damage to the door and \$112.00 for the lock.

In regard to the tenant's application seeking a rent abatement for May 2013, I find that the tenant is entitled to a 25% rent abatement for the month of May 2013, in the amount of \$275.00, due to the fact that the landlord took possession of the rental unit prematurely.

I find that the tenant is also entitled to additional compensation in the amount of \$250.00 for being denied access to his possessions, as well as in recognition for extra living expenses and moving costs associated with being suddenly evicted and locked out of the unit. The tenant is credited with the \$550.00 security deposit being held in trust by the landlord. The total compensation owed to the tenant is \$1,075.00.

In setting off the amounts to which each party is entitled, I find that the remainder that is owed to the landlord is \$1,251.81.

#### **Return Possessions and Claims for Cost of Storage**

The tenant has requested monetary compensation for the value of the tenant's possessions, but acknowledged that they are actually more interested in the immediate return of the items being held.

At the same time, the landlord is requesting compensation for costs incurred for moving and storing the property.

Section 24(1) of the Act states that a landlord may only consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

Subsection 24(2) of the Act states that the landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

If the landlord has satisfied all of the criteria above, section 24(3) of the Act states that the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with the Act and Regulation.

Given the above, I do not accept the landlord's position that the tenant had abandoned the suite or his personal property.

While I fully accept that the landlord did incur costs of \$1,368.4, claimed for the moving and storage, the fact that the landlord confiscated the tenant's possessions without due process under the Act and Regulation and refused to release the items for a time, affects the landlord's right to claim compensation for breaching the Act.

Section 57(2) of the Act prohibits a landlord from taking actual possession of a rental unit that is occupied by an over-holding tenant unless the landlord has a valid writ of possession issued under the Supreme Court Civil Rules. I find that the landlord did not have a valid writ from the Supreme Court.

In any case, I find that the tenant was not over-holding the rental unit at the time the landlord chose to take possession, as the tenancy was due to end on May 31, 2013 with an Order of Possession effective that date. The landlord removed the tenant's possessions on May 25, 2013.

During the hearing, a mediated discussion was held with respect to the landlord's wrongful eviction and noncompliant handling of the tenant's personal possessions and the tenant's desire to retrieve the property.

The parties agreed to make arrangements for the tenant to retrieve the property by having an associate pick up the items.

I find that this matter is being addressed through cooperation between the landlord and the tenant. Therefore, I will dismiss the landlord's monetary claim relating to compensation for the storage and moving costs and the tenant's monetary claim for reimbursement for the value of the items, with leave to reapply.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation in the amount of \$2,326.81 and the tenant is entitled to monetary compensation of \$1,075.00, including the security deposit. Accordingly, I hereby grant the landlord a monetary order for the difference in the amount of \$1,251.81. This order must be served on the tenant and may be enforced through Small Claims Court.

Each party is responsible for their own cost of their application.

### **Conclusion**

Both the landlord and the tenant are partly successful in their applications and each is granted monetary compensation. The parties entered into a mutual agreement for the return of the tenant's possessions and the parties' claims relating to the confiscation and storage of possessions are dismissed with leave.

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: July 10, 2013

---

Residential Tenancy Branch