



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement and for the return of the Tenants' security deposit.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on July 4, 2013. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there losses or damages to the Tenants and are the Tenants entitled to compensation?
2. Are the Tenants entitled to the return of the Tenants' security deposit?

### Background and Evidence

This tenancy started on April 1, 2012 as a fixed term tenancy with an expiry date of March 31, 2013. Rent was \$1,250.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$625.00 on April 1, 2012. A move in condition report was completed on April 1, 2012 and a move out condition report was completed on April 3, 2013.

At the start of the conference call the Landlord said there has been a number of previous hearings on this tenancy and the issues in the Tenants' application have been ruled on in an Arbitrator's decision of December 7, 2013 and another Arbitrator's decision dated September 4, 2013.

The Landlord's evidence indicates that The December 7, 2013 decision dealt with compensation for the time it took to do repairs and reduced value of the tenancy due to

the racoon problem and the damage the racoons did to the rental unit. The decision awarded the Tenants \$150.00 as compensation for the racoon problem.

The Tenant said that this application is for compensation for the inconvenience and loss of enjoyment of the unit because of the racoon damage and the last application was for reduced value of the tenancy because of the racoon problem. The Tenant said they have made this application because the photographs they submitted in the previous hearing were disallowed because the photographs were serviced to the Landlord in a way not prescribed by sections 88 and 89 of the Act. The Tenants said that was not fair and the issue should be heard again.

The Arbitrator said that previous decision cannot be changed in a new hearing and issues cannot be heard a second time just by making a new hearing application. Both the Tenant and the Landlord said they understood that.

The evidence indicates the Tenants application heard on December 7, 2012 was for \$5,000.00 for loss or damage under the Act, regulations or tenancy agreement for compensation for a reduced value in the tenancy due to the racoon problem.

As well the evidence indicates that the hearing heard on September 3, 2013 was an application by the Landlord for compensation for damage to the unit and to retain the Tenants' security deposit. The decision shows the Landlord was successful and was granted a monetary order for \$538.33 for damage and was ordered to retain the Tenants' security deposit as partial payment of damages.

The Tenant said that the condition of the house was terrible. The Tenant said it caused health issues for her family and was a constant problem from April, 2012 to December, 2012 when the Landlord fixed the racoon problem. The Tenant said they force the Landlord to fix the racoon problem because the dispute resolution Hearing was in December, 2012. The Tenant continued to say they do not have any medical evidence to support their claim of health issues caused by the racoon problem.

The Landlord said the Tenant did not advise them of a racoon problem until August, 2012 and they addressed the issue immediately, but the work was not completed until December, 2012. The Decision of December 7, 2012 indicates the Landlord received an email from the Tenants on August 28, 2012 informing the Landlord of the racoon problem.

The Landlord said in their closing remarks that the move in condition inspection reports show the house to be in good condition, they dealt with the racoon problem as quickly as they could and the Tenants are just rearguing the situation because they did not like the previous decisions.

The Tenants said in closing that the Landlords have defamed their character and have treated them very poorly throughout the tenancy. The rental unit had a racoon problem

that caused the Tenants health issues and devalued the tenancy; therefore the Tenants believe they should be compensated \$5,000.00 by the Landlord.

### Analysis

The Tenants application is for \$5,000.00 compensation for unhealthy living conditions mold and electrical issues which reduce the value of the tenancy as a result of racoon problems at the rental unit. The Tenants' previous application was for \$5,000.00 for reduced value of the tenancy because of racoon problems. I find the Tenants' application is not materially different from their application which was heard and decided on December 7, 2012. As a decision and order cannot be changed by a different Arbitrator and issues cannot be heard a second time by making a new application on the same issues; I dismiss without leave to reapply the Tenants' monetary claim for \$5,000.00 for a reduced value of the tenancy due to the racoon problem. The previous decision of December 7, 2012 stands in full effect. The Tenant has been awarded \$150.00 for reduced value of the tenancy due to the racoon problem.

With respect to the Tenants' security deposit again the decision and order of September 4, 2013 awarded the security deposit to the Landlord for damages. This decision cannot be overturned by an Arbitrator just by making a new application for the same issue. I dismiss the Tenants' application to recover the security deposit without leave to reapply.

### Conclusion

The Tenants application 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: October 08, 2013

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Residential Tenancy Branch