



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Dispute Codes:

MND, MNSD, FF

## Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order damage, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. Although it is not clear on the Application for Dispute Resolution whether the Landlord has selected or deleted a claim to retain all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution, at the hearing the Landlord stated that he had intended to make these two claims. I therefore will consider those claims at these proceedings.

The Landlord stated that he personally served the male Tenant with two copies of the Application for Dispute Resolution and Notice of Hearing during the first week of August of 2013. The Tenant stated that she believes only one copy of the Application for Dispute Resolution and Notice of Hearing were served to the male Tenant, however she stated that she received the documents from the male Tenant and that she is representing him at the hearing. On the basis of the undisputed evidence, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing.

The Tenant requested an adjournment for the purpose of providing photographs and other evidence of the condition of the furniture that is the subject of this dispute. She requested the adjournment because she was unclear of whether the Landlord was seeking a monetary Order of \$850.00 in compensation for damage to the furniture or if the Landlord was seeking to retain the security deposit as compensation for damage to the furniture. She stated that this confusion arises from the Application for Dispute Resolution, in which it is not clear whether the Landlord has selected or deleted the claim to retain the security deposit.

The application for an adjournment was denied, as I find the Tenant had ample time to submit this evidence. Regardless of whether the Tenant was disputing the application for a monetary Order in compensation for damaged furniture or the application to retain the security deposit in compensation for damaged furniture, the nature of the evidence required to dispute the claim is unchanged.

The Landlord and the female Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. No evidence was submitted by either party.

The Landlord periodically disrupted these proceedings by interrupting the Tenant while she was speaking. After three warnings the Landlord was electronically muted for a period of time to prevent him from continuing to interrupt the proceedings. The Landlord behaved appropriately for a short period of time after being removed from "mute mode", although he subsequently interrupted the hearing by mumbling denials while the Tenant was speaking and he was again electronically muted for a period of time. The Landlord behaved appropriately for the remainder of the hearing after being removed from "mute mode" for a second time.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

#### Background and Evidence

The Landlord and the Tenant agree that they entered into a tenancy agreement that began on July 16, 2013; that the Tenant was permitted to move into the rental unit on July 15, 2013; that the Tenant was required to pay rent of \$1,700.00; that the Tenant paid a security deposit of \$850.00; and that the Tenant has not yet provided the Landlord with a forwarding address, in writing.

The Landlord stated that he sublet the rental unit to the Tenant. The Tenant stated that they did not know the rental unit was being sublet to them when they entered this tenancy agreement, although they now know that their Landlord is not the owner of the rental unit.

The Tenant stated that they vacated the rental unit on September 01, 2013 at the request of the owner of the rental unit. The Landlord stated that he does not know when the Tenant vacated the unit, as it was not communicated to him by either the Tenant or by his landlord. He stated that he did not realize the Tenant had moved out of the rental unit until a few weeks ago when they asked for the return of their security deposit.

The Landlord and the Tenant agree that they have a written tenancy agreement that indicates the unit is a furnished rental unit. The Tenant stated that on July 15, 2013 the Landlord was asked to move all the furniture out of the unit; that he agreed to move the furniture out of the unit; that he did not move the furniture out of the unit; that they went

to the address provided by the Landlord and determined that it was vacant; and that he did not reply to their emails about moving the furniture.

The Landlord stated that the Tenant did inform him they did not want the furniture in the rental unit; that he told them they could store it at their own expense; that he never agreed to move the furniture; and that he never received an email in which the Tenant asked him to move the furniture.

The Tenant stated that as they were unable to contact the Landlord to have the furniture moved, they placed the couch and a television on their patio, which they covered with a tarp. The Landlord stated that he first realized the furniture had been moved on August 01, 2013 when he came to the unit to collect the rent and that when he observed the furniture on the patio it was not covered with a tarp.

The Landlord stated that the furniture had been damaged by rain and he does not know what happened to the furniture after the Tenant vacated the rental unit. The Tenant stated that she that the furniture was not damaged during the tenancy; that it could not have been damaged by rain as it was covered with a tarp; and that the furniture was left on the patio when they vacated the unit.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has failed to establish that the couch and television the Tenant placed on the patio were damaged. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as photographs, that corroborates the Landlord's claim that the furniture was damaged or that refutes the Tenant's claim that it was not damaged. As the Landlord has failed to meet the burden of proving the furniture was damaged, I dismiss the Landlord's claim for compensation for the alleged damage.

I find that the Landlord's application has been without merit and I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord's Application for Dispute Resolution has been dismissed in its entirety.

The Landlord has the right to retain the Tenant's security deposit until the Landlord receives a forwarding address for the Tenant in writing, at which time the Landlord is obligated to comply with section 38 of the *Act*. At the conclusion of this hearing the

Landlord confirmed that he is receiving mail at the address noted on this Application for Dispute Resolution.

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: November 06, 2013

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Residential Tenancy Branch

