



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD, OPT, RR

### Introduction

This is an application for a Monetary Order for \$6,191.00, a request for an Order for return of part of the security deposit, a request for an Order of Possession, a request to allow the tenant to reduce the rent, and a request for recovery of the \$100.00 filing fee.

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

All testimony was taken under affirmation.

### Issue(s) to be Decided

Is the applicant entitled to a Monetary Order for \$6,191.00?

Is the applicant entitled to an Order for return of part of the security deposit?

Is the applicant entitled to an Order of possession?

Is the applicant entitled to a rent reduction?

Is the applicant entitled to recovery of the \$100.00 filing fee?

## Background and Evidence

The applicant testified that:

- She viewed the rental property on numerous occasions before actually committing to rent the property and during those viewings she made it very clear to the landlord that she would only rental property if she was able to use wood heat as the primary source of heat in the rental unit.
- At no the time during those viewings did the landlord informed her that there was any sort of problem with the chimney in the rental property.
- The landlord agreed to allow her to heat the rental unit with wood heat, however informed her she would have to purchase your own wood heater.
- As a result she went out and purchased her own wood heater and connecting pipes.
- The first day of August the landlord had the wood heating system inspected by a professional technician and during that inspection she overheard the landlord informed the technician of his concerns due to the fact that there had been numerous chimney fires over the years.
- The technician inspected the chimney and found that the clay liner was damaged and recommended that it be replaced.
- The landlord was not willing to pay for this chimney repair and as a result she had to have the repair done herself, however she believes that the landlord should reimbursed her the cost of the repair because the landlord was fully aware that she intended to heat the house by wood heat and made no mention of any problem with the chimney.
- The cost of materials and labour to fix the chimney came to \$1688.41.
- At the beginning of the tenancy the landlord also agreed to allow her to paint the interior the rental unit, and agreed to pay for supplies, and labour at \$10.00 per hour.
- The landlord also agreed to allow her to remove some of the carpeting in the rental unit and replace it with laminate flooring, as well as putting laminate flooring in the basement area and he agreed to pay for the supplies and pay her labour at \$20.00 per hour.
- The landlord has reneged on his agreement, and only paid a part of labour costs, and refused to pay the material costs.
- The landlord still owes \$636.15 for materials, and \$740.00, for labour for painting and installation of the flooring.
- As part of the tenancy agreement the landlord agreed that the shop on the property would be included in the rent of \$1200.00 per month, and the landlord was fully aware that she intended to use the shop for commercial purposes.

- She had planned to use the shop as an area to dehydrate local tree fruits and nuts to be prepared for gift baskets to market to local businesses and by mail-Order.
- She believes that she could earn \$500.00 per month in sales if she had the use of the shop, and that amount would double in the month of December due to the holiday demand.
- The landlord had told her she that the shop would be cleared out in a few weeks, however the landlord later reneged on that agreement and to date has not cleared his belongings out of the shop. As a result she believes she has lost income totaling \$2900.00.
- The landlord did reduce the rent by \$200.00 per month for loss of use of the shop, however since she believes she could have made \$500.00 per month, that's a loss of income of \$300.00 per month with a further \$500.00 loss in the month of December.
- Further since the rent was reduced to \$1000.00, she believes that \$100.00 of her security deposit should also be returned as she had paid a \$600.00 security deposit which is more than the 50% allowed.
- When she rented the property she also made it clear, as did the landlord, that she would be responsible for taking care of the fruit trees and vines on the property, and that she would also be allowed to harvest the majority of the fruit.
- In September of 2013 the landlord came to the property and picked the majority of the fruit from the two most desirable trees, leaving only five to 8% of the fruit for her use. This is clearly a breach of their agreement.

The applicant is therefore requesting a Monetary Order as follows:

Cost of chimney repair	\$1688.41
Cost of materials still outstanding	\$636.15
Tenant labour still owed	\$740.00
Loss of potential income	\$2900.00
Return security deposit overpayment	\$100.00
Filing fee	\$100.00
Total	\$6164.56

She is also requesting an Order that the landlord comply with the tenancy agreement and refrain from taking the majority of the fruit from the fruit trees on the property.

The applicant's witness/boyfriend testified that:

- On one of the occasions while viewing the rental property he had a conversation with the landlord in the shop, and at that time the landlord stated it would take him several weeks to a month to clear out the shop.

The applicant's witness/daughter testified that:

- Before viewing the house they spent quite a while viewing the shop, garage and outside of the rental property.
- They then went into the basement and into the mud room.
- She was present during a conversation with the landlord where they talked about painting for \$10 an hour.
- When asked if she remembers any conversations about flooring she stated she does not.

The respondent testified that:

- He did agree to allow the tenant to install a wood heater in the rental unit, however he never agreed to do any upgrading to the chimney, and in fact informed the tenant that there had been numerous chimney fires in the chimney and that if she intends to install a wood heater all costs of any upgrades would be her responsibility.
- The house was rented with baseboard heating as the primary source of heat, and if the tenant chose to change it to wood heat, it was to be at her own expense entirely.
- He did agree to allow the tenant to do some painting in the rental unit, even though it did not need painting, and the painting was only so the tenant could have colors of her choosing.
- He also agreed to pay the tenant for the painting, however the amount she was charging was exorbitant and therefore he told her he believed the amount she was claiming was unreasonable and she accepted a smaller more reasonable amount.
- He never agreed to pay the tenant to install laminate flooring in the rental property; this was a decision of her own and on her own.
- No actual agreement was ever concluded regarding the use of the shop.
- The tenant had stated that she wanted to use the shop to put in a commercial kitchen; however he stated that this would not be allowed and he did not agree to allow the tenant to put in a commercial kitchen.
- He did inform the tenant that the shop would be available for her to use in the future, but it would be unlikely that he would be able to clear the shop out for

some months. Even so the shop would still not be usable as a commercial kitchen.

- He did attempt to come to a written agreement with the tenant, and even filled out a tenancy agreement for the tenant to sign; however the tenant not only refused to sign the agreement, the agreement was torn by the tenant's boyfriend.
- Therefore since no agreement could be concluded with the tenant regarding the shop or the tenancy agreement itself, he agreed to reduce the rent by \$200.00 per month and not include the shop.
- The tenant agreed to pay \$1000.00 per month for the rental property without the shop, and has not been paying for the shop on this rental property, and he therefore does not believe that he should be held liable for any lost income.
- As far as the security deposit is concerned, he thought he had returned \$100.00 to the tenant, when she agreed to rent the property without the shop, however he's not sure about that and therefore he may not have.
- He therefore believes that the tenants full claim should be dismissed, other than possible returned of the \$100.00 security deposit overpayment.

### Analysis

#### Chimney repair

It is my decision that I will not allow the applicant's claim for the cost of the repair to the chimney liner.

When the applicant viewed the property, a wood heater was not included in the rental, and although the landlord agreed to allow her to install a wood heater, I find it unlikely that he would have agree to upgrade the rental property to allow her to do so.

Unfortunately nothing was put in writing, however since the tenant has admitted that the landlord informed her she would have to purchase her own wood heater, I find it most likely that she would've been informed that all costs related to installing the wood heater would have to be borne by herself.

Further, although the applicant states that she was never informed prior to renting, that the chimney had had numerous chimney fires, I find it most likely that the landlord would have informed her once he became aware of the fact that she wanted to use wood heat as their primary source of heat. I therefore accept the landlords claim that he did inform the tenant that the chimney had had previous chimney fires.

### Painting

I also deny the tenants claim for any further payments for painting in the rental unit as I have reviewed the tenant's labour records, and I find that the hours claimed to be excessive.

Therefore since the landlord has already paid the tenant for a portion of the amount claimed, it is my decision that no further payment will be ordered for painting.

### Laminate flooring

I also deny the claim for purchasing and installing laminate flooring, as is my finding that the applicant has not met the burden of proving that the landlord ever agreed to pay her to change and/or add laminate flooring in the rental unit.

The burden of proving a claim lies with the person making that claim, and in this case since it is just the applicant's word against that of the respondent, that burden of proof has not been met.

### Loss of income and Order of Possession for the shop

I also deny the claim for loss of income and Order of Possession for the shop.

First of all, I am not convinced that any agreement was ever reached to include the shop in this rental agreement, nor am I convinced that, had the shop been included, a commercial kitchen would have been allowed.

I accept that there were conversations about use of the shop, and that there was an attempt by the landlord to execute a written tenancy agreement with the tenant; however that agreement was rejected and torn up and never signed by the tenant.

After that agreement was rejected, it's obvious there were some renegotiations, and an agreement was reached in which the shop was not included, and the rent was renegotiated at \$1000.00 per month.

The tenant accepted the return of \$200.00 that she had previously paid for the month of May 2013, and subsequently has only been paying \$1000.00 per month for a property that does not include the use of the shop.

Since nothing was ever put in writing I must conclude by the tenant's acceptance of the return of her \$200.00, and the renegotiated rent of \$1000.00 per month, that she has accepted that the shop is not included in this rental.

Secondly, even if the shop was to have been included in this rental, the tenant has provided insufficient evidence to show that she could have produced an income of \$500.00 per month on her proposed business. The tenant has simply stated that she believes she could produce \$500.00 per month in sales, but has provided no business plan or market research to show the viability of her proposed business.

#### Security deposit

When the parties renegotiated the rent on this unit, the rent was set at \$1000.00 per month, and therefore the tenant does have the right to the return of \$100.00 due to overpayment of the security deposit. The tenant did not have to file a claim for return of this portion of the security deposit however because the Residential Tenancy Act allows the tenant to deduct any overpayment of the security deposit from rent payable to the landlord. The tenants may therefore deduct the amount from any future rent payable.

#### Fruit

It's my finding that since the tenant is renting this property, it is the tenant that has the right to the use of the fruit from the fruit trees and vines on the property, and therefore the landlord should not be removing any fruit without first getting the approval of the tenant.

#### Filing fee

Is my decision that I will not allow the request for recovery of the filing fee, as I've only allowed a very small portion of the applicant's claims.

Conclusion

As stated above the tenant has the right to deduct \$100.00 from future rent payable to the landlord to recover the overpayment of the security deposit.

I Order that the landlord refrain from removing any fruit from the fruit trees and vines on the property without permission of the tenant.

The remainder of the tenants 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: January 09, 2014

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Residential Tenancy Branch



