



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for damage or loss under the *Residential Tenancy Act* (the “Act”) and for the return of the security and pet damage deposit. The Tenant also applied for the recovery of the filing fee for making this application.

The Landlord and Tenant appeared for the hearing and provided documentary evidence prior to the hearing which I determined was served in accordance with the Rules of Procedure.

Although the Tenant did not follow the prescribed means of service of the Notice of Hearing documents and a copy of the Application, the Landlord confirmed receipt of the documents and agreed to continue with the hearing. As a result, I determined that the Tenant had sufficiently served the Landlord with the required documents pursuant to the authority afforded to me under section 71 of the Act.

### Preliminary Matters

At the start of the hearing the Tenant indicated that she had not provided the Landlord with a forwarding address within a year of the tenancy ending, pursuant to Section 39 of the Act. When the Tenant was questioned about the reasoning for making the Application for the return of the security and pet damage deposit, the Tenant stated that she did not select this on her application and that the Residential Tenancy Branch had marked this off. The Residential Tenancy Branch does not have the authority to do this on behalf of any party to dispute resolution. As the Tenant did not want this issue to be

dealt with, I amended her application to remove this portion of the Application pursuant to Section 64(3) (c) of the Act.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the oral and written evidence before me, but only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation for one month's rent?
- Is the Tenant entitled to monetary compensation for property alleged to have been disposed of by the Landlord?

#### Background and Evidence

The Tenant testified that her tenancy for the rental unit started in May, 2010 for which she was paying \$850.00 on the first day of each month. The Tenant testified that in October, 2011 the property was bought by the Landlord (named in this Application) who had indicated to her that he had an intention to move into the rental suite in two months time and had started to plan for renovations of the suite.

The Landlord and Tenant signed a new tenancy agreement, which was provided as evidence, starting on November 1, 2011 for a fixed period of 2 months ending on December 31, 2011 after which point the Tenant is required to move out. This was confirmed by the initials of the Landlord and Tenant in Section 2 of the tenancy agreement. According to the rental agreement, the Tenant was required to pay a lower amount of rent of \$800.00 on the first day of each month.

The Tenant testified that she provided written notice to the Landlord on November 15, 2011 that she would be leaving the tenancy on December 1, 2011 which she did. The Tenant now claims the Landlord owes her 1 month's rent as compensation due to the provisions stipulated by Section 51 of the Act in the amount of \$850.00.

The Landlord testified that he did indicate to the Tenant that he wanted to move into the rental suite but decided to proceed with a fixed term tenancy instead. The Landlord testified that he did not give the Tenant a notice to end tenancy for landlord's use of property and neither was there any intention of this as it was a fixed term period and such a notice cannot be issued during a fixed term tenancy. The Landlord claimed that the Tenant reneged on her contract and left the tenancy early, owing him outstanding rent for December, 2011 which the Tenant did not pay.

The Tenant also claims from the Landlord for missing items which she claims were disposed of by the previous Landlord's maintenance staff. The Tenant did not provide a list of the items which she claims were disposed of, but alluded to them in her testimony as Christmas decorations and ornaments, items of sentimental value, and various personal items. The Tenant explains in her written submissions that she is willing to accept what the "Rental Board" feels fit as monetary compensation for these items; however, according to the Landlord's written submission she claims a total of \$1,161.00 for these items.

The Tenant testified that she already had storage assigned to her in the garage of the rental suite. However, when the Landlord took over the tenancy, the Tenant claims that the Landlord asked her to remove her items from the garage as she could only have one wall as storage as part of the new tenancy. The Tenant testified that she had a lot of property in the garage and as a result, claimed that the Landlord gave her permission to use the storage space under the stairs. The Tenant testified that the storage space under the stairs was cleaned out by an agent of the previous Landlord and during this time, the items claimed above were all disposed of.

The Landlord testified that at no time was the Tenant given permission to move her items into the storage below the stairs of the rental suite. The Landlord submitted the storage space was not part of the Tenant's rental suite and that the Tenant had asked him about having more storage. The Landlord stated that the addendum to the tenancy agreement clearly stipulates that there was no storage area available for the Tenant and only part of the garage is provided as storage for the duration of the tenancy; this was initialled by the Tenant on the addendum and provided as evidence for the hearing.

The Landlord testified that his contract for the purchase of the property with the previous Landlord involved a clause which required the previous Landlord to remove all of his personal belongings from the property, excluding the Tenant's rental suite. As a result, the previous Landlord had an agent attend the property and dispose of all of the property in the storage area underneath the stairs which the Tenant now claims

included her belongings. The Landlord had no idea of the missing items being claimed by the Tenant until the Tenant made this application.

The Tenant also claims from the Landlord \$65.00 for a gate which the Tenant had installed for her pets. The gate was 2 by 3 feet in size and the Tenant claimed that it was temporarily attached to the neighbour's fence and was not a permanent fixture.

The Landlord denied the Tenant's testimony and submitted that the gate was a permanent fixture that was bolted and screwed into the walls of the property and that the gate forms part of the house which he purchased.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

In order for a Landlord to compensate a Tenant under the provisions of Section 51 of the Act, Section 51(1) states that this is dependent on the Tenant receiving a notice to end tenancy under Section 49 of the Act, namely the 2 Month Notice to End Tenancy for Landlord's Use of Property. However, a Section 49 notice to end tenancy is also dependant on good faith and the circumstances and evidence can also determine if an understanding was established that such a notice was deemed to have been served. In this case, I find that no notice under Section 49 of the Act was given to the Tenant that required the Landlord to give the Tenant compensation for one month's rent claimed. The Tenant engaged into a legal contract with the Landlord to pay rent for a fixed length of time which was due on the first day of the two month period, and the Tenant failed to meet this requirement by not paying December, 2011 rent. Although the Landlord indicated that he may be moving in at the end of the tenancy, I find that the Tenant has not provided sufficient evidence to show that under the circumstances she was eligible for compensation under Section 51 of the Act. As a result, I dismiss this portion of the Tenant's application.

In relation to the Tenant's claim for the missing items amounting to \$1,161.00, I find that the Tenant has failed to provide sufficient evidence to show that the Landlord is responsible for paying these costs. I accept the Landlord's evidence that at no time was the Tenant given written or verbal permission to store her items in the storage space underneath the stairs, which was an area not forming part of the rental unit. As a result, I find that the Landlord should not be held responsible for costs incurred as a result of the Tenant violating the terms and agreement she entered into with the Landlord regarding the storage space which the Tenant did not have access to.

Policy Guideline 1 to the Act defines a fixture as a "thing, although originally a moveable chattel, is by reason of its annexation to, or association in use with the land, regarded as a part of the land". In relation to the Tenant's claim for the cost of the gate she installed, I find that the Tenant has not provided sufficient evidence to show that the gate is not a fixture to the property as claimed by the Landlord. The Tenant stated that she placed the gate to secure her pets and that it was not a permanent fixture. I find that the purpose and nature of the gate is to be an immovable object designed to prevent anyone from getting into or out of the property. If the Tenant claims that the gate was easily moveable then I find it difficult to understand why this was not taken by the Tenant at the end of the tenancy. I find the evidence of the Landlord that the gate was a fixture more credible and compelling than the Tenant's evidence and as a result, I dismiss this portion of the Tenant's application.

As the Tenant has failed to prove the Application, I dismiss the Tenant's request to recover the filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's application **without** leave to re-apply.

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: March 24, 2014

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Residential Tenancy Branch

