



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

The hearing originally convened on January 27 at which time the tenant advised that she had not received all of the landlord's evidence. In an interim decision issued on the same date, I directed the landlord to serve on the tenant the Monetary Order Worksheet, a Future Shop order confirmation and a colour copy of her photographs. When the hearing reconvened on March 24, the parties agreed that the landlord had not served the tenant with the colour copies of photographs as directed. The landlord testified that she did not provide colour photographs because she believed the black and white copies which had been previously served were sufficiently clear.

At the reconvened hearing, I advised the landlord that because she had not complied with my direction to provide the tenant with the same evidence she had provided to the Residential Tenancy Branch, I would not accept the photographic evidence. The decision below is made on the basis of the oral and documentary evidence of the parties.

The parties were in a previous dispute resolution hearing on January 10, 2013 (the "First Hearing"). In the decision resulting from that hearing, the Arbitrator made several findings of fact by which I am bound and also awarded the tenant the security deposit for which the landlord has now applied. As the issue of the security deposit has already been determined, that part of the landlord's claim is dismissed without leave to reapply.

I note that the landlord argued that she did not attend the First Hearing and therefore should not be bound by its findings. The landlord was represented at that hearing by her son and if her son was not authorized to represent her, she had the option of judicially reviewing the decision to have it set aside. She chose not to do so and is therefore bound by that decision and order.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

As per the findings in the First Hearing, the tenant occupied the rental unit for just 10 days, vacating after the landlord cut off the electrical and water supply, glued the locks to the door of the rental unit to prevent access and locked the tenant's car in the garage.

The landlord claimed that during the 10 days she occupied the rental unit, the tenant broke 2 refrigerators in the unit and caused a flood which damaged the roof of the garage, the garage's electrical wiring and a toilet and shower. The tenant denied having broken the refrigerators or caused any other damage.

The landlord testified that the tenant failed to return the keys and remote control for the garage and that as a result, someone entered the garage several months after the tenancy ended and stole a video game console, a chair, a screw driver and a clothes chest. The landlord further testified that the tenant used so much hot water during her tenancy, that she overworked the hot water heater, which the landlord had to replace. The landlord also claimed that she had to replace the door locks at the end of the tenancy.

The tenant denied having caused any damage whatsoever to the rental unit and stated that she did not return to the rental unit after she vacated.

### Analysis

In order to prove her claim, the landlord must prove that she suffered a loss, that the tenant caused the loss by breaching the tenancy agreement or the Act and also must prove the amount of the loss.

I cannot consider the landlord's photographs as she refused to provide colour copies to the tenant despite my clear direction and the only remaining evidence from the landlord is her oral testimony, an order confirmation for a refrigerator dated April 21, 2013, a statement from her current tenant, B., stating that he "found one microwave and two refrigerators ... broken. So one used microwave and one new refrigerator was replaced at landlord's expenses." (reproduced as written) and a written statement from another tenant.

The landlord claimed that the tenant damaged two refrigerators and claimed to have spent \$771.00 replacing them. She provided an order confirmation in B.'s name which indicates that the approximately 9 year old refrigerator was replaced at a cost of \$399.99, but she provided no evidence that she paid any amount of money whatsoever to replace the smaller, newer refrigerator. The larger refrigerator was not replaced until 4 ½ months after the tenancy ended and after a new tenant had occupied the unit for almost 2 months. Given the extreme delay in replacing these appliances, I am not satisfied on the evidence that the tenant caused the alleged damage as it is entirely possible that the new tenant, B., caused the damage alleged. Further, the landlord provided no evidence to support her claim that she spent money replacing the smaller refrigerator as she provided no receipt. I dismiss the claim for the cost of replacing the refrigerators.

The decision resulting from the First Hearing shows that the landlord had locked the tenant out of the garage. This is a finding of fact with which I cannot interfere. As the landlord had the ability to lock the tenant out of the garage, I find that it is not possible for the tenant to have used her key or the remote control to enter the garage herself after her tenancy had ended or to provide those means of access to another party. I find that the landlord has not proven that the tenant caused the video game console or other items to be stolen and I dismiss the claim for the cost of replacing those items.

The decision resulting from the First Hearing shows that the landlord cut off the tenant's electrical and water supply for one week of the 10 day tenancy. I find it very unlikely that the tenant was able to cause flooding as the landlord had shut off her water supply. If there was a flood as claimed by the landlord, and I make no such finding as there is not sufficient evidence to persuade me that this occurred, I find it likely that it occurred because the tenant had turned on the tap at some point when the water supply was disconnected and left the tap open. I cannot fault the tenant for such actions as after one week of being denied water, she could not have expected that service would be unexpectedly restored. For these reasons, I find that the landlord has not proven that the flooding occurred or that the tenant caused it and I dismiss the claims for the cost of repairing the roof of the garage, the garage's electrical wiring and the toilet and shower.

The landlord has not provided evidence to support her claim that the water heater was damaged or that any money was spent replacing the water heater. In the absence of such evidence, I find that she has not proven her claim and I dismiss the claim for the cost of replacing the water heater.

The landlord has been completely unsuccessful in her claim and therefore I find that she must bear the cost of the \$50.00 fee paid to file her application.

### Conclusion

The 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: March 24, 2014

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Residential Tenancy Branch

