



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for the cost of emergency repairs - Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order for the return of the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on June 1, 2012 and ended on May 1, 2013.

The Tenant states that the Landlord breached the tenancy agreement by not providing parking and by allowing the upstairs tenant to have a dog.

The Tenant states that their tenancy agreement does not allow pets and that the Landlord allowed the upper tenants to have a dog. The Tenants state that the dog, either a Rottweiler or a pit bull, was kept in a cage in the yard but was periodically let

out without supervision. The Tenant states that the lawn was covered by feces and that they could no longer enjoy the back yard. The Tenants state that at the outset of the tenancy the Landlord agreed that the Tenants would have use of the back yard. The Tenants state that the dog was also kept on the upper deck and that on occasion the deck area was not secured. The Tenants state that the dog would bark and spit at them and that they and their guests were afraid of the dog. As a result the Tenants state that they lost peaceful enjoyment of the unit. The Tenant states that although the Landlord was informed of the problems caused by the dog, the Landlord did nothing. The Tenants provided witness letters in relation to the dog.

The Tenant states that although the tenancy agreement provides for one parking spot, the upper tenants did not allow the Tenants to park in the driveway and that the upper tenants harassed the Tenants when they did attempt to park. The Tenant states that they informed the Landlord of the loss but nothing changed. The Tenant states that as a result they were forced to park on the street within a week of the tenancy start.

The Tenants state that a leak appeared in the unit and the Tenant used their own towels to contain the leak until the Landlord made repairs. The Tenants state that following the repairs and during the summer months of 2012 a white substance started to grow on one carpet and the unit smelled bad. The Tenants state that this white substance was mold and that the Landlord was informed of the mold but did nothing. The Tenants states that the plumber who made the initial repairs told the Tenants and the Landlord that after everything was dry more repairs would be needed but that nothing was done. The Tenants state that one of the Tenants has an autoimmune disorder and that the unit caused the Tenant to be ill. The Tenant states that a doctor was seen who told the Tenant that the mold could possibly have caused her health problems. The Tenant provided copies of medical reports. I note that the medical reports are two hospital reports indicating primary complaint of abdominal pain and what appears to indicate problems with colitis or a flu. The Tenant states that since moving out of the unit the health problems have disappeared. The Tenant provided witness letters in relation to the mold. The Tenant claims \$3,700.00 for their losses.

The Landlord states that the upper tenants were allowed the pet under its tenancy agreement, that the pet was kept in a cage or on the deck and that all gates were secured at all times. The Landlord agrees that the dog barked as that is what dogs do. The Landlord states that after the Tenants complained about the dog he spoke with the upper tenants and determined that they were not allowing the dog to be loose. The Landlord states that the dog was allowed to run in the backyard but that the upper tenants were always present while the dog was out. The Landlord states that in addition to the use of the back yard the Tenants also had use of a porch.

The Landlord agrees that the tenancy agreement provides for a parking space and states that space was on the street. The Landlord states that when the Tenants did park their car on the driveway they would block the upper tenants from leaving so the Landlord told them to park on the street.

The Landlord states that he did many repairs to finally find and repair the leak in the unit, replaced the carpets in the basement unit and used dryers in the unit. The Landlord states that when he inspected the unit after being told mold was growing, there was no mold to be seen and everything was totally dry. The Landlord states that the plumber who did the repairs only told the Landlord to clean and spray the area and that no further repairs were needed.

The Tenant states that at the outset of the tenancy the Landlord agreed to provide half of the garage to store their furniture however the upper tenants moved into the unit and before they could bring their furniture for storage, the upper tenants filled the garage and there was no room for the Tenant's furniture. The Tenant states that as a result they stored the furniture outside under the deck and covered it with tarp but that it was ruined by the rain. The Tenants states that they had to throw all the furniture away. The Tenants did not obtain a storage locker for their belongings. The Tenant claims \$1,750.00 for this loss.

The Landlord denies offering the Tenants the use of the garage and that there is nothing in the tenancy agreement that allows them use of the garage. The Landlord states that the Tenants borrowed his truck to haul furniture to the dump but that the furniture came from inside the unit as the Tenants brought more occupants into the unit and needed more room for the occupants.

The Tenant states that the unit they lived in was an illegal unit and that they were forced to move as a result. The Tenant claims compensation of \$2,000.00.

The Tenant claims return of the security deposit. It is noted that the security deposit was dealt with in a previous decision dated November 14, 2013.

The Landlord states that the Tenant owes the Landlord monies arising from previous monetary orders issued under the Act.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. While there may have been mold growing in the unit, the medical evidence does not indicate any apparent connection between mold and the symptoms complained of by the one Tenant. Further the Tenants provided no evidence of any loss in relation to the mold other than an invoice for towels with no receipts attached. I therefore dismiss this claim.

Even if there was an oral agreement to provide storage, given that the Tenant stored the furniture outside, I find that the Tenants failed to take reasonable measures to mitigate its loss and I therefore dismiss this claim.

I accept that the presence of the type of dog described would cause concern for the Tenants however given the Landlord's evidence and the Tenant photos of the yard, I also find that the dog was restrained at all times. That being said, based on the evidence of the Landlord that the dog was allowed to run in the yard, noting the photos and considering that the Landlord did not dispute the presence of feces, I find that the Tenants did suffer some loss of use of the back yard.

Finally, it is clear that the Tenants were provided with a parking spot in the tenancy agreement as public street parking is not something the Landlord can provide as exclusive use for the Tenant I find that the Tenants did suffer a loss. As the Tenant provided no basis for the total amount claimed, I find that the Tenants are entitled to a nominal sum of **\$200.00** in relation to the loss of use of the back yard. I also find that the Tenants are entitled to a reasonable sum of \$25.00 per month for each month of the tenancy for the loss of parking. This amounts to **\$275.00**.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. While I accept that the unit provided to the Tenant was likely not a legal suite, the Tenants provided no evidence of any loss in relation to the provision of the unit. Further, I note that a previous decision indicates that the Tenants moved from the unit as the Landlord had obtained an order of possession for unpaid rent. As the Tenants have not shown that the legality of the unit is what caused them to vacate the unit, I find that the Tenants have not substantiated the loss claimed and I dismiss this claim.

Section 77 of the Act provides that a decision or order is final and binding on the parties. As the matter of the security deposit has been dealt with in a previous decision, I find that the Tenant no longer has a claim to the deposit and I dismiss this claim. As the Tenants have been primarily unsuccessful with its application I decline to award recovery of the filing fee.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$475.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 16, 2014

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Residential Tenancy Branch

