



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC FF

### **Introduction:**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 65 and 67 for compensation for property of the tenant that was stolen due to negligence of the landlord;
- b) A monetary order as compensation for their moving expenses which were caused by repeated vandalism of the tenants' cars; and
- c) An order to recover the filing fee pursuant to Section 72.

### **SERVICE**

Both parties attended. The landlord acknowledged receipt of the tenant's Application by registered mail. I find that the documents were served according to section 89 of the Act.

### **Issue(s) to be Decided:**

Has the tenant proved on a balance of probabilities that the landlord through act or omission caused the alleged damages and that the landlord should compensate him for the damages? If so, what should be the amount? Is the tenant also entitled to recover the filing fee?

### **Background and Evidence:**

This is the third hearing between these parties. On June 11, 2013 under file #AAAAAA, the landlord obtained an Order of Possession and a monetary order for rental arrears. On February 17, 2014 under file #BBBBBB, the landlord obtained a further monetary order. This is the first hearing with the tenant as applicant.

The tenant claims as follows:

1. \$1855: compensation for tools which he states were new in 2008; he submitted no receipts although he said he had some. The theft was not reported to Police.
2. \$1200: for moving costs as they were forced to move due to continuous vandalism on their cars. He states others in the neighbourhood were not vandalized as they were. ICBC dealt with some of the claims.

The tenant claims the landlord is responsible for his tools being stolen. He thinks they were stolen on April 25, 2013 after he left written moving notices in the garage. He says the landlord then left the garage door open all the time and he could not get her to close it. He said he moved out on May 25, 2013 but his tools were left in the garage and a van on the driveway. He said the keys were changed, he could not get in anymore and early in July, he entered the

basement window and accessed the garage to find the following tools were missing; Makita 3.5" coil nailer 1, Hitachi 2" brad nailer 1 (total \$616), Hitachi 2" roofing nailers 2 (total \$1004), a Tajima hand saw 1(\$135) and a Japanese hammer 1 (not available in Canada but worth over \$100). The landlord called the Police regarding the break and enter and there is a file on it. He said he has receipts but did not provide them as evidence. He quotes exhibit numbers in his Affidavit but there were no pictures of the tools or receipts although some pictures of an open garage door.

The landlord pointed out that the garage was not part of the tenancy agreement but said she gave verbal permission for the tenant to use part of it for storage. She said she saw no tools as described and she provided photographs of other items stored in the garage which showed no such tools. A letter from a neighbour who works in the construction industry said he was inside the garage and takes interest in tools but states that he never saw the tenant with any such tools and never saw them in the garage. On May 28, 2013, he notes that he told the landlord there was nothing of value there. The landlord also provided a letter sent by registered mail to the tenant on May 17, 2013 asking him to remove his tools and store them in the barbeque area or barn and to return her remote control (the tenant says he did not receive it). In the hearing on file #BBBBBB on February 17, 2014, the undisputed evidence was that the keys and remote control had never been returned. She said that if the garage door was open, the tenant had his own remote and could have closed it anytime. She was in another country for part of the time. The landlord also provided letters from neighbours saying they had never had vehicles vandalized in the 4 to 13 years that they have lived there.

In evidence are some receipts for repair work done on cars, an Affidavit of the Tenant, registered mail receipts, photographs from the tenant showing a notice in a foreign language on a door and open garage doors; from the landlord, photographs showing shelves of a garage with numerous items of the tenant, registered mail, prior decisions and orders, police file numbers, statements from neighbours re. tools and safety of neighbourhood.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

The onus is on the applicant who is the tenant to prove on the balance of probabilities their claim. Here the tenant claims that the landlord through act or neglect caused his tools to be stolen and his cars vandalized. Although he states that the landlord was careless or neglected to close the garage door which left his tools unprotected, I find insufficient evidence to support his claim. I find the weight of the evidence is that he was provided with a remote control to the garage and could close it himself.

Although the use of the garage was not a part of the tenancy agreement, I find the landlord honestly agreed that she had given him verbal permission to use it to store some tools. However, I find he vacated due to being evicted by Order of Possession issued June 11, 2013 and the landlord had revoked her permission to store goods in the garage by letter dated May

27, 2013. I find the tenant's evidence somewhat confusing and inconsistent as he stated in the hearing today that he did not know when the tools were stolen, he found out in July when he broke into the house through the basement window that they were gone (almost two months after he vacated), he made no report of the theft, although the tools were allegedly valuable, he provided no receipts for the tools although he said they were purchased in 2008 and he had receipts, and he provided no photographs of the alleged tools or other evidence of possession although he provided photographs of the open garage door. I note that in the hearing in February 2014, he said the landlord could dispose of items he left inside the house as they were valueless. I dismiss this portion of the tenants' claim.

In respect to the vandalism to the tenants' cars, I find the claims were dealt with by ICBC. However, the tenant claims moving costs for he said he was forced to leave due to ongoing vandalism. I find the weight of the evidence is that the tenant was forced to leave because of a Decision awarding an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent. I find insufficient evidence that the landlord through act or neglect caused the tenants' problems with vandalism. I dismiss this portion of the tenants' claim.

**Conclusion:**

I dismiss the Application of the tenant in its entirety and I find he is not entitled to recover the filing fee due to his lack of success in establishing his claim.

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: June 11, 2014

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Residential Tenancy Branch