



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNSD, MNDC, FF  
                                 MNDC, MNSD, RPP, FF, O

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenants. The landlord has applied for an Order of Possession for cause; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord return the tenants' personal property; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended and the tenants called one witness. The parties and the witness each gave affirmed testimony, and the parties provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised. During the course of the hearing, the landlord withdrew the application for an Order of Possession.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of revenue and breach of contract?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for over-payment of rent and replacement costs of personal property not returned by the landlord?
- Have the tenants established that the landlord should be ordered to return the tenants' personal property?
- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?

### Background and Evidence

The landlord testified that this fixed term tenancy began on July 15, 2012 and expired after one year. Rent is payable on the 1<sup>st</sup> day of each month and the landlord collected a pro-rated amount for the first month of the tenancy. A copy of the tenancy agreement has been provided and it states that the "...Lease Agreement shall automatically renew each year unless terminated in writing." Rent in the amount of \$1,200.00 per month was originally payable under the tenancy agreement, however the landlord testified that it was raised to \$1,248.00 per month commencing on January 1, 2014. The landlord did not use the form provided by the Residential Tenancy Branch to increase the rent but testified that the tenants were provided with 3 months notice. Also, at the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord.

The landlord further testified that on February 10, 2014 an email from the tenants was received which stated that the tenants were moving out on March 1, 2014 and stated that the landlord could keep the security deposit towards February rent. The tenants had paid \$500.00 toward that month's rent on February 3, 2014, which would leave a balance of \$148.00 outstanding. The landlord did not receive any other written notice to vacate by the tenants, and testified that the email does not contain a signature of the tenants. The tenants moved out on March 1, 2014 and the landlord decided not to re-rent the unit due to the stress of being a landlord. The landlord claims \$1,248.00 for rent for the month of March as well as the outstanding balance of \$148.00 for February, 2014 in addition to keeping the \$600.00 security deposit.

The landlord also testified that a move-in condition inspection report was not completed at the outset of the tenancy, but on March 3, 2014 the landlord completed a move-out condition inspection report without the tenants. The parties had agreed that it would be completed on March 3, 2014 at 4:30 but the tenants did not partake in the inspection. A copy of that report has been provided which also contains a forwarding address of the tenants but no signature of the tenants.

The landlord testified that the tenants also left damages in the rental unit and has provided a summary sheet and makes the following claims:

- \$519.00 for damages to the back door and testified that the tenants were not permitted pets as per the tenancy agreement and the tenants had a cat and a dog. The scratches to the door and door frame were caused by the tenants' dog;
- \$100.76 for replacement of a lilac tree that the landlord testified was chewed up by the tenants' dog;
- \$353.50 for replacement of a broken window;
- \$59.99 for replacement of a broken bathroom mirror;
- \$15.77 for repair of the shed door which the landlord testified that the tenant ripped off the hinges by forcefully opening it while it was frozen with snow and ice;
- \$185.00 for cleaning costs; the landlord testified that the tenancy agreement provides for such and the tenants did not clean the rental unit prior to the end of the tenancy;
- \$50.00 for extra cleaning for wax and stain removal from the tenants' dog tipping over wax air fresheners;
- \$5,503.90 for water damage; the tenancy agreement contains a clause stating that the tenants will ensure that the unit will be kept clean and sanitary, removing garbage and trash as it accumulates, maintaining plumbing in good working order to prevent stoppages and leakage of plumbing fixtures, faucets, pipes, etc. Further, the landlord had resided in the rental unit prior, and there were no problems with the plumbing, and has provided a copy of an email from the tenants stating that the kitchen sink flooded for 3 days;
- \$175.00 for garbage and spring clean-up.

The landlord further testified that the window, the bathroom mirror, the shed door and the water damage have not been repaired, and estimates for those have been provided. Photographs have also been provided.

The landlord had agreed that the tenants would have the entire day on March 1, 2014 to finish moving and cleaning and on March 2, 2014 the landlord changed the locks to the

rental unit. The tenants arrived that evening to get more belongings and the landlord denied them access. The police were called who helped mediate and the landlord agreed to allow the tenants 3 hours the following day. One of the tenants attended the following day and took about 1 hour to finish. The tenant was not asked to complete the move-out condition inspection report at that time because the landlord wanted them out, and the landlord completed it in the tenants' absence.

With respect to the tenants' claim for return of personal property, the landlord testified that the rental unit sold on April 15, 2014 and what the new owners did with the tenants' belongings is not known. The tenants did not contact the landlord about those items until sometime in May by email stating that the tenants wanted stuff from the back yard that was covered in snow at the end of the tenancy.

The first tenant testified that there was never any agreement to raise the rent and the tenants were not given the form required under the *Residential Tenancy Act*.

The tenant also testified that the landlord was advised in an email dated January 1, 2014 of the tenants' intention to move out because the parties had talked about the tenants purchasing the rental unit, and the tenants wanted to make it clear to the landlord that they were no longer interested in purchasing. Then on February 10, 2014 the tenants gave a notice to end tenancy to the landlord, again by email, stating that they would be moving out March 1, 2014.

The tenant also testified that the landlord had 3 dogs while residing in the rental unit and the scratches on the door and door frame existed prior to the commencement of this tenancy.

The tenant also denies that the tenants' dog damaged the lilac tree and testified that she took care of the yard. There is nothing wrong with the tree; the photograph is taken in the winter with snow up high on the tree and will be beautiful in the spring.

The tenant testified that no one in the family broke the window and does not know when or how it happened. There was no walk-through at the outset of the tenancy and it could have been broken then.

The tenant agrees that the tenants broke the bathroom mirror but does not agree with the amount. It's a small sheet that's broken with no frame.

The tenant also testified that it was impossible to get stuff out of the yard at that time of year due to snow. The landlord told the tenants they had to get everything out

immediately or they would never get it. She was being very difficult, and the tenant removed the hinges to the shed door, laid the door on the ground, took belongings out and leaned the plywood door against the shed, but did not re-attach it because he had no tools.

The tenant also believed that the tenants had until March 3, 2014 at 4:30 to finish cleaning because that's when the move-out condition inspection was scheduled for. But on March 2, the tenants attended the rental unit and were denied entry. The landlord was very hostile and the tenant called the police. The tenant couldn't go in to finish cleaning. With respect to the wax and stains, the tenant testified that she told the landlord that she had a product that would remove it.

With respect to the flooding, the tenant testified that she found the counters in the kitchen flooded when she got up one morning and tried to find the source. The faucets had been loose since the beginning of the tenancy but had never been a problem until then. The tenant cleaned up the water and the landlord was called. Two days later it happened again but this time the water was on the floor in a corner. It was not wet for long and the tenants cleaned it up and emailed the landlord. The landlord fixed it 20 days later.

The tenant further testified that they were not planning to move in the winter time, but some stuff was under the deck at the end of the tenancy and the snow was higher than the deck. It's common in the north for tenants to return to rental units in spring to retrieve items that could not be moved in the winter due to snow and ice. The tenants have provided a list of items left at the rental unit, for which they claim against the landlord and the list shows replacement costs that the tenant testified were obtained from Wal-Mart and Canadian Tire on-line:

- 14 foot trampoline \$309.99 or \$336.00;
- Propane BBQ, Tank, Side Burner for \$299.00 or \$198.00;
- 15' X 36" pool and filter for \$249 or \$198.00;
- Rectangle table, 4 chairs, umbrella for \$199.00 or \$294.00;
- Square table, 4 chairs, umbrella for \$300.00 or \$344.00;
- 6' heavy pipe estimated by BC Hydro for \$250.00;
- Princess Doll House for \$358.00 from Wal-Mart;
- Little Tykes Coupe Car for \$477.77 from Wal-Mart;
- Igloo Cooler 100 quart for \$129.00 from Canadian Tire;
- Rolling Tool Box for \$169.00 from Canadian Tire; and
- Various tools estimated at \$100.00.

The tenants claim \$2,858.76 from the landlord for return of the security deposit and replacement costs of the items not returned by the landlord.

The tenants' witness provided a letter dated March 28, 2014 attesting to the condition of the rental unit at the outset of the tenancy, and testified that the contents of the letter are true to the best of her knowledge. The letter states that she helped the tenants clean the house before they could move in. The stove, kitchen cabinets, floor, garage all had to be cleaned, and the baseboards and basement reeked of urine and every surface in the basement was cleaned.

### Analysis

Firstly, with respect to the landlord's claim for unpaid rent and the tenants' claim for an over-payment of rent, the *Residential Tenancy Act* requires a landlord to use the approved form when increasing rent. The parties agree that was not done in this case. The parties also agree that the increased amount of \$48.00 per month commenced on January 1, 2014. Therefore, I find that rent is \$1,200.00 per month and the tenants are entitled to recover \$48.00 for January. With respect to February's rent, the parties agree that the tenants paid \$500.00 on February 3, 2014. I have read the emails provided by the landlord and I find that the tenants also agreed that the landlord could keep the \$600.00 security deposit in lieu of rent, and the landlord is entitled to recover the other \$100.00. I hereby set off that amount from the overpayment of January's rent, and I find that the landlord is entitled to keep the security deposit and is entitled to recover \$52.00. The tenants' application for return of the security deposit is dismissed.

I have also reviewed the tenancy agreement, and I find that the term of the tenancy is fixed to expire after one year, being July 14, 2014. The *Act* requires a tenant to give notice to end a fixed term tenancy effective not earlier than one month after the date the landlord receives the notice, must be given before the day in the month that rent is payable under the tenancy agreement, and must not be earlier than the date specified in the tenancy agreement as the end of the tenancy. The *Act* also specifies that the notice must be in writing and must be signed. In this case, the tenants breached that clause of the contract by ending the tenancy earlier than agreed to and did not give a notice within the time required or in the form required because the notice wasn't signed. However, the *Act* also requires a party to do whatever is reasonable to mitigate any loss suffered by the other party's failure to carry out the terms of the contract or comply with the *Act*. In this case, the landlord did nothing to re-rent the rental unit and testified that she decided not to due to the stress of being a landlord, and then sold the house. I find that the landlord had every reason to believe that the tenants would remain in the rental unit for the month of March until the tenants sent the email on March 1. The parties

eventually agreed that the move-out condition inspection would take place on March 3, 2014, and therefore, I find that had the landlord advertised the rental unit, a new tenancy could not commence before March 15, 2014. In the circumstances, I find that the landlord is entitled to recover rent for the first half of March, 2014 or \$600.00.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Dealing firstly with the landlord's claim for damages, the parties agree that no move-in condition inspection report was completed at the commencement of the tenancy. The landlord completed a move-out condition inspection report without the tenants present on March 3, 2014, which is the date the tenant returned to retrieve items from the shed. The move-out condition inspection report is not very useful without a move-in report to compare it to. Therefore, I must rely on the testimony of the parties and other evidentiary material provided, and I find as follows:

- The tenant testified that the landlord resided in the rental unit prior to this tenancy and had dogs. I cannot find that the landlord has established that the scratches to the back door were caused during the tenancy by the tenants' dog.
- I have reviewed the photograph of the lilac tree taken with a lot of snow surrounding it, and I see no chewed marks. The tenant testified that there's nothing wrong with the tree, and I find that the landlord has failed to establish element 1 in the test for damages.
- The landlord testified that the window, the bathroom mirror, the shed door and the water damage have not been repaired and the house is now sold. The landlord is not entitled to recover damages if the landlord didn't suffer any financial loss.
- With respect to the landlord's claim for cleaning, extra cleaning for wax and stain removal, and for garbage and spring clean-up, the tenants take the position that they believed they had until March 3, 2014 at 4:30 p.m. to finish because that's when the move-out condition inspection was to take place, but the landlord changed the locks on March 2, 2014. The landlord testified that the tenancy ended on March 1, 2014. A landlord is required to provide a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant and a tenant is required to leave a rental unit at the end of the tenancy reasonably

clean and undamaged except for normal wear and tear. The tenants' witness testified that the rental unit required cleaning before the tenants could move in and the landlord has not disputed that testimony. Therefore, I am not satisfied that the landlord has established a cleaning cost of \$185.00. I have reviewed the photographs and I accept that the landlord has established a cost of \$50.00 for wax and stain removal. With respect to garbage clean-up, I accept that the tenants were responsible for removing garbage, but no evidence of the costs associated with that has been provided. A tenant is not responsible for spring clean-up, and I deny the landlord's \$175.00 claim.

With respect to the tenants' application for a monetary order for recovery of replacement costs of items left at the rental unit, the regulations to the *Residential Tenancy Act* specify that a landlord may dispose of a tenant's personal property if the tenant abandons it. It can only be considered abandoned if the tenant tells the landlord or the tenant could not reasonably be expected to return to retrieve it. The tenant testified that it's common in the north for tenants to return to properties after snow melts to retrieve personal property. However, I can only apply the law, not the common practice of the north. Further, I have no evidence before me that the landlord believed it to be common practice. A tenant may claim personal property before it's disposed of by the landlord, but must reimburse the landlord for reasonable costs of removing and storing the property. The landlord is required to store the property in a safe place for a period of not less than 60 days. The house sold on April 15, 2014 and the landlord testified that whatever the new owners did with the property is not known. I find that neither party has complied with the regulations, but the onus is on the landlord to dispose of the property in accordance with the regulations. The landlord did not do so and I find that the tenants have established elements 1 and 2 of the test for damages. With respect to the amounts claimed, the tenants have provided a list of items left at the property and one of the tenants testified that the list contains costs obtained on-line from Wal-Mart and Canadian Tire. However, I must ensure that any order made does not put the tenants in a better financial position than they would be in if the landlord had not failed to comply with the regulations. I have no evidence before me of the condition of any of the items claimed by the tenants. Perhaps the trampoline and pool were not in useable condition, and perhaps the other items were old and needed replacing in any event. I accept that the amounts are reasonable for new items, but I am not satisfied that the tenants have established the worth of the items at the end of the tenancy.

With respect to the tenants' application for return of personal property, I cannot order the landlord to return something that is not in the possession of the landlord. The rental property has sold and the landlord testified that what the new owners did with the property is not known.



In summary, I find that the landlord has established and entitlement to keep the security deposit and to a monetary claim as against the tenants for unpaid rent in the amount of \$100.00, loss of revenue in the amount of \$600.00 and damages in the amount of \$50.00. I further find that the tenants have established a monetary claim as against the landlord in the amount of \$48.00. The tenants' application for a monetary order for recovery of replacement costs of personal property is hereby dismissed without leave to reapply. The tenants' application for return of all or part of the security deposit is hereby dismissed without leave to reapply. Since both parties have been partly successful with the applications, I decline to order that either party recover the filing fee. I also order that the monetary amounts be set off from one another and I grant a monetary order in favour of the landlord in the amount of \$702.00.

### Conclusion

For the reasons set out above, the tenants' application for a monetary order for recovery of replacement costs of personal property is hereby dismissed without leave to reapply.

The tenants' application for return of all or part of the security deposit is hereby dismissed without leave to reapply.

I hereby order the landlord to keep the \$600.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$702.00.

This order is final and binding and may be enforced.

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 10, 2014

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Residential Tenancy Branch

