



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover the security and pet deposit and an Order for the landlord to comply with the *Act*. During the hearing the tenant attending withdrew their application to recover the security and pet deposits as these have been returned by the landlord and for an Order for the landlord to comply with the *Act*.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All relevant evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy started on April 29, 2013 although the tenants had previously been renting a different unit in the building from September 01, 2012. Rent for this unit was \$750.00 per month due on the 1<sup>st</sup> of each month. The tenancy ended on April 30, 2014

The tenant testified that they had a trampoline in the yard and when the landlord was doing some yard work he moved the trampoline which caused damage to the metal main frame. This has warped the main frame and prevented the tenants using the trampoline. The tenant testified the trampoline had been purchased in 2012 for \$400.00 and was 21 months old. The tenants seek compensation of \$400.00 for the damage to the trampoline and due to the damage the tenants did not take the trampoline with them when they moved from the unit.

The tenant testified that from either December, 2013 or January, 2014 two other tenants in the building were smoking in their units. The tenant testified that when they moved into their unit they had to sign a no smoking addendum to their tenancy agreement and expected that other tenants had to sign the same thing. The tenant testified that this is a heritage home and the closet wall in her daughter's room was not finished properly and was open to the stairs going to another unit. The smell of cigarette smoke filtered from the stairwell and other tenant's unit into her daughter's closet and bedroom. The tenant testified her daughter has been unable to sleep in her room and her clothes in the closet smell of smoke. The tenant testified she spoke to the other tenant and asked her to smoke outside; however, as this tenant had been drinking and suffered with depression she continued to smoke in her unit. The tenants asked the landlord to address this issue but the landlord did not start to deal with it until May. When the tenant made repeated phone calls to the landlord, the landlord became angry and swore at the tenant telling the tenant never to phone him again.

The tenant testified that she asked the landlord to sign a mutual agreement to end tenancy so the tenants could end their tenancy before the lease term expired. The landlord refused to communicate with the tenant concerning this. The tenant testified that in the final three months of their tenancy another tenant was selling drugs from their unit and numerous people were coming and going. The landlord only dealt with the problems in the month after the tenants gave their notice to end tenancy and at that time gave three tenants an eviction notice. The tenant testified that her small dog was also attacked by another tenant's dog and the landlord has uttered threats against the tenant and her small dog. The tenant testified that she called the police about the landlord's threats and they assured the tenant they had spoken to the landlord and the landlord would not be coming around making any more threats. The tenant testified that she also called the police concerning the landlord's vandalism to the trampoline. The police informed the tenant that the landlord had been given a warning. The tenant verbally provided two police file numbers in evidence. The tenant seeks to recover the rent paid from January to June, 2014 in compensation for a loss of quiet enjoyment of her rental unit to an amount of \$4,500.00.

The landlord disputed the tenant's claims. The landlord testified that he does not do yard work at the property but has on occasion just done some weed whacking. The landlord testified he employs someone to do yard work. The landlord denies damaging or touching the tenants' trampoline. The landlord disputed that the police ever gave the landlord a warning for vandalism against the trampoline.

The landlord testified that when he was notified about other tenants' smoking in the building he called the other tenants to determine who was smoking; however, all the tenants denied doing so. The landlord had to take time to investigate who was smoking and when this was determined in May, 2014 that tenant was sent a warning letter and was evicted in June 2014.

The landlord disputed that he has ever threatened the tenants or the tenants' dog and had only told this tenant not to call the landlord unless it was an emergency. The

landlord testified that he tried to avoid all contact with the tenant as the tenant was abusive and violent towards the landlord. On one occasion the tenant threatened the landlord with a broom handle. The landlord testified that the police did contact the landlord about the tenant's accusations concerning threats against her but the police were told the landlord did not threaten her. The landlord testified that he did tell the tenant that if she let a neighbour's cat live in her unit the landlord would have to evict the tenants and the tenant then claimed the landlord was threatening her.

The tenant testified that the landlord did do yard work whenever he was in town. One day the landlord was weed whacking and came to the tenants' door with the weed whacker running. It was on this occasion that the tenant defended herself with a broom. The tenant denies ever being abusive towards the landlord.

The tenant asks the landlord why it took the landlord until May 31 to issue a letter to the tenant about smoking when the tenant had brought it to the landlord's attention in January. The landlord responded that the matter was being addressed, the landlord asked the tenant to check if the laundry room door was open and the landlord investigated the matter by speaking to other tenants to determine who was smoking.

### Analysis

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have reviewed the evidence and testimony before me and find that with regard to the trampoline; the tenant has insufficient evidence to meet the burden of proof that the landlord caused damage to the trampoline. I further find the tenant has insufficient evidence to show the actual cost of replacing the trampoline. When it is one person's word against that of the other then the burden of proof is not met and this section of the tenants' claim for \$400.00 is dismissed.

With regard to the tenants' claim for a loss of quiet enjoyment, the tenant argued that other tenants were not complying with their tenancy agreement and were smoking in their units which caused discomfort to the tenant and her daughter. The tenant argued that the landlord did not do anything to remedy this situation when notified in January and only issued a warning letter in May. I find as the landlord did issue a warning letter to the offending tenant and then proceeded to evict that tenant that it is likely that tenant had been smoking in her unit which caused discomfort to this tenant and her daughter. I am satisfied that this caused a loss of enjoyment for the period between January and June. I further find the landlord did investigate and eventually issue a warning letter to the tenant. A landlord must have proof before issuing any tenant with an eviction notice and therefore must investigate another tenant's complaints before issuing any warning letters or eviction notices, as without proof a landlord would not be able to evict a tenant for cause. I find the length of time it took the landlord to investigate who was smoking is

excessive considering the impact this had on these tenants. Other tenants should not have to suffer from secondhand smoke when it is a non-smoking building. I therefore find the tenants' quiet enjoyment of the unit was effected by the other tenant's smoke for six months of their tenancy; however, I find the amount claimed for this is excessive. Consequently, I have limited the tenants' claim to \$100.00 per month to an amount of \$600.00.

### Conclusion

I HEREBY FIND in partial favor of tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$600.00** pursuant to s. 67 of the *Act*. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable through the Provincial Court 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: December 22, 2014

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Residential Tenancy Branch

