



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MNSD, MNDC, FF (Landlord's Application)  
MNDC, RPP, FF (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on January 6, 2015 and the Tenants on February 25, 2015.

The Landlord applied for: a Monetary Order for unpaid rent; to keep the Tenants' security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and recovery of the filing fee from the Tenants.

The Tenants applied for: the return of their personal property; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee from the Landlord.

The Landlord appeared for the hearing with an assistant; however only the Landlord provided affirmed testimony during the hearing. The Tenants appeared for the hearing and provided affirmed testimony; the Tenants had with them their legal advocate who provided submissions on behalf of the Tenants. Both parties confirmed receipt of each other's Application and documentary evidence by registered mail in accordance with the Act.

### Preliminary Issues

I first turned my mind to the Landlord's Application. The Landlord explained that while she had disclosed a monetary claim for \$16,700.00, this was a clerical error and should have read as \$16,000.00. As a result, I allowed the Landlord to amend her Application to correct the monetary claim amount pursuant to my authority under Section 64(3) (c) of the Act.

The Landlord was invited to explain her monetary claim and stated that her claim amount related to a Monetary Order which had been issued to her following a non-participatory hearing conducted on December 16, 2014 (the file number for which appears on the front page of this decision).

The Arbitrator who had conduct of the non-participatory proceedings issued the Landlord with a Monetary Order in the amount of \$16,000.00 for unpaid rent. The Landlord explained that she made her Application for this amount again because she wanted to know why the Tenants had not paid the outstanding rental arrears after the order had been served to them and wanted the Tenants to account for this.

The Landlord was informed that an Application cannot be made for the purposes of enforcing a Monetary Order and that the Landlord is at liberty to pursue the order through the Small Claims Court for enforcement if the Tenants have not paid the debt. The matter relating to unpaid rent had already been determined in the proceedings of December 16, 2014. Therefore, there were no legal findings for me to make on the Landlord's Application with respect to the monetary claim of \$16,000.00.

In relation to the Landlord's Application to retain the Tenants' security, Section 38(3) of the Act states:

*"A landlord may retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid."*

[Reproduced as written]

The Tenants acknowledged that rent had not been paid to the Landlord at the end of the tenancy. Therefore, pursuant to Section 38(3) of the Act, the Landlord is able to keep the Tenants' security deposit in partial satisfaction of the \$16,000.00 of unpaid rent previously ordered on December 16, 2014.

I then turned my mind to the Tenants' Application. The Tenants sought recovery of their personal possessions from the Landlord who currently has most of them stored at a storage company location, as well as missing items from the rental unit which were not being stored at the company location. In the alternative, the Tenants sought monetary relief from the Landlord for the replacement cost of the items if the Landlord disposed of the property or failed to return it.

The parties spent the following two hours presenting extensive evidence and making submissions in relation to the Tenants' Application. During the conclusion of the hearing

the Landlord indicated that she was willing to release the Tenant's personal property at no cost to them. The Tenants agreed that they would be willing to go to the storage company location to collect their belongings.

As a result, I asked the parties to put their heads together, discuss the issues between them and turn their minds to compromise in an effort to achieve a resolution of the dispute.

### Analysis & Conclusion

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Both parties **agreed** to settle the dispute as follows:

- The Tenants will collect their personal property currently being stored at the company location which is known to the parties. The Tenants will have between **March 28 and March 31, 2015** to collect their items and are responsible for making an appointment with the company for collection between these agreed dates. The Landlord will arrange with the storage company approval for the release of the Tenants' personal property prior to this date and for the period of this date only.
- Once the Tenants had retrieved their personal property from the storage location, the Tenants agreed that they will be able to return all the keys and parking passes for the rental unit and building to the rental building concierge after the later of the Tenants retrieving their personal property or by the end of **March 31, 2015**.
- The Landlord agreed that the Tenants can attend the rental unit building for the purpose of retrieving their two bicycles currently held in the bicycle storage area of the building by the end of **March 31, 2015**. These bicycles will be released by the concierge of the building. The Landlord agreed to provide the concierge with written permission for the release of the bicycles for this deadline.
- The Landlord agreed to return the Tenants' two televisions and a barbeque currently in the rental suite which also belong to the Tenants. These three items will be returned to the Tenants by the **end of April, 2015**. The Landlord and Tenant may agree on the manner in which these items are to be returned but the Landlord will be ultimately responsible for delivering these to the Tenants.

The parties agreed to the above terms and conditions as they were being constructed during the hearing and also confirmed them at the end of the hearing.

I did not hear the Tenants' monetary claim as this aspect of the Tenants' Application hinged on the status of the Tenants' property. Therefore, I have made no legal findings on the Tenants' monetary claim. However, I provide leave to re-apply for monetary compensation for the replacement cost of items if the Landlord fails to return to the Tenants their property in relation to the above agreement. I also find that the Landlord is at liberty to make a monetary claim for keys and parking passes not returned by the Tenants in accordance with this agreement.

In relation to the filing fees paid by the parties, I firstly determine that the Landlord is not entitled to the \$100.00 filing fee for making the Application as she was already awarded the amount of \$16,000.00 in a previous hearing which was the reason why she had to pay an increased fee of \$100.00 as oppose to a filing fee of \$50.00. Therefore, I have only considered the Landlord's claim to recover the filing fee in the amount of \$50.00. As both parties were successful in aspects of their claim, I find that each party is entitled to the recovery of their filing fee. After these amounts are offset with each other, this results in no outstanding award to any of the parties for the filing fees.

### Conclusion

The Landlord agreed to return the Tenant's personal property in accordance with agreed conditions. The Tenants' Application for monetary compensation relating to the return of their personal property is dismissed with leave to re-apply.

The Landlord is entitled to keep the Tenant's security deposit. The Landlord's monetary claim for unpaid rent is dismissed.

The parties' Application to recover their filing fee is dismissed without leave to re-apply. This agreement is fully binding on the parties. Both files are now closed.

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 26, 2015

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Residential Tenancy Branch

