



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC MNR, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for \$1749.98 and a request for recovery of the filing fee.

The landlord's application is a request for a monetary order for \$2865.00, and a request for recovery of the filing fee.

Some documentary evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

### Issue(s) to be Decided

The issue is whether or not the landlord or the tenant has established monetary claim against the other, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on July 15, 2009 with the monthly rent of \$1050.00, due on the first of each month.

The parties also agree that the tenant paid a security deposit of \$525.00 on June 19, 2009.

The tenant testified that no forwarding address in writing was given to the landlord prior to applying for dispute resolution.

The tenant testified that in the first week of June of 2015 the landlord took out the shade trees at the rental property, thereby disrupting their living, and resulting in a loss of quiet enjoyment of the rental property.

The tenant further testified that he asked the landlord to wait until he vacated before removing the trees but the landlord refused that request and therefore he is requesting that the landlord be ordered to pay \$525.00 for loss of use and enjoyment of the rental property.

The tenant is also requesting that the landlord be ordered to pay double the security deposit because the deposit has not been returned, and a forwarding address was provided with the application for dispute resolution.

The tenant further testified that he withheld his last month's rent because the landlord gave him a Notice to End Tenancy for landlord use, however he is also requesting moving expenses of \$120.43, and a change of address charge of \$54.55.

The tenant is also requesting an order for recovery of his \$50.00 filing fee.

Therefore the total amount that the tenant is requesting an order for is as follows:

loss of quiet enjoyment	\$525.00
Double security deposit	\$1050.00
Moving costs	\$120.43
Change of address cost	\$54.55
Filing fee	\$50.00
Total	\$1799.98

The landlords testified that they made a mistake on their application for dispute resolution and are, in fact, not asking for three months rent, but are asking that the tenant be held liable for rent for the month of August 2016, as the tenant had not fully vacated the rental unit until the first or second week of August 2016.

The landlord further testified that the tenants left numerous belongings at the rental unit and the yard was full of dog feces, and as a result he had to pay \$240.00 for the cost of dump fees and for removal of those items.

The landlords further testified that they did remove some trees from the rental property in June of 2015, however at no time did the tenant request that they not remove the

trees or asked them to stop removing the trees. They were unaware of any issue with removal of the trees until they received the tenants application for dispute resolution.

The landlords further testified that the July 2015 rent check was not honored by the bank.

In response to the landlords testimony the tenant testified that the reason the July 2015 rent check was not honored by the bank is because he put a stop payment on that check since his last month's rent was supposed to be free.

The tenant further testified that he was fully moved out of the rental unit by August 2 2015 and although he did leave some items behind, there were also some items left in the rental unit when he first moved in, which he had to dispose of. The tenant denies leaving any dog feces in the yard of the rental property, stating that he always made sure all dog feces was removed from the rental property.

In response to the tenant's testimony the landlord testified that he believes the tenant was supposed to have been out by July 31, 2015 and if he did not vacate until August 2, 2015 he believes the tenant should have to pay the full rent for the month of August 2015, since he did not pay the July 2015 rent.

### Analysis

It is my decision that neither the landlord nor the tenant has established a claim against the other at this time.

The tenant has claimed a loss of use and enjoyment of the rental property, however it is my finding that the tenant has not met the burden of proving that portion of the claim. The burden of proving a claim lies with the person making the claim and when it is just one person's word against that of the other that is not sufficient to meet the burden of proving the claim. The tenant claims he asked the landlord not to cut down the trees, however the landlord denies ever having been asked to not cut down the trees. Therefore it is just the tenant's word against that of the landlord, and that is not sufficient to meet the burden of proving the claim.

I also deny the tenants request for return of the security deposit at this time.

The tenant has applied for the return of double the security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

I therefore dismiss this claim with leave to re-apply.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today June 20, 2016, and therefore the landlord has 15 days from today to return the security deposit.

I also deny the tenants claim for moving costs and change of address costs as the tenant had his last month rent free, and that is all that is required under the Residential Tenancy Act, when a 2 month Notice to End Tenancy is given for landlord use.

I deny the landlords claim for August 2015 rent because the tenant vacated the rental unit fully by August 2, 2015 and, since the unit was being demolished, the landlord had no loss of income as a result of the tenant vacating two days late.

I also deny the landlords claim for removing items from the rental property as the landlord has failed to provide any invoices in support of that claim.

I have therefore denied the landlords full claim, and as stated above the landlord must return the full security deposit to the tenant within 15 days of today's date.

Having denied both the landlord and the tenants claim it is my decision that they must each bear the cost of the filing fee they paid.

### Conclusion

#### Tenant's application

The tenants claim for return of the security deposit is dismissed with leave to reapply if the landlord fails to return the deposit within the 15 day time frame.

The remainder of the tenants claim is dismissed without leave to reapply.

Landlord's application

The landlord's application is dismissed, in full, without leave to reapply.

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 20, 2016

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Residential Tenancy Branch