



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNR MNSD MNDC FF

### Introduction

This hearing dealt with monetary applications by the landlord and the tenants. Both the landlord and one tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on or about December 2015. The rental unit was a cabin on the landlord's property. The initial tenancy agreement was a verbal agreement. On April 3, 2015 the parties signed a one-page written agreement. The written agreement does not indicate the monthly rent. The agreement contain terms including the following:

- the landlord agreed to rent a cabin, a 10 by 10 wooden shed and usage of on third of the existing pole shed;
- satellite use is included, usage based on the landlord's past billing service; and
- garbage service is provided on a two-week schedule or tenants can pay the extra charge for weekly garbage pick-up.

The landlord did not do a move-in inspection with the tenants or complete a condition inspection report.

On September 21, 2015 the landlord served the tenants with a two-month notice to end tenancy for landlord's use. The notice indicates that the tenants must move out of the rental unit by October 31, 2105. The landlord did not indicate on the second page of the notice the reason for ending the tenancy. The tenants did not make an application to dispute the notice. The tenants vacated the unit and returned the keys to the landlord on October 24, 2015.

### *Landlord's Claim*

The landlord claimed compensation for the following:

- 1) \$708.75 to repair walls and apply two coats of paint – the landlord stated that the tenants damaged the walls. The landlord provided photographs of holes and other damage in walls and the receipt for this work;
- 2) \$338.51 for an air filter – the landlord stated that she brought the air filter over to the rental unit because the tenants were constantly smoking pot inside and it reeked. The landlord stated that the tenants took the air filter when they left. The landlord provided a receipt for the air filter;
- 3) \$386.65 for gravel to repair the driveway – the landlord stated that she told the tenants at the beginning of the tenancy that she did not want RVs but the tenants brought their RV onto the property and damaged the road. The landlord submitted a receipt for the road crush;
- 4) estimated \$50.00 for a shower curtain – the landlord stated that the tenants removed the shower curtain when they moved out;
- 5) \$100.00 for rent for the shed;
- 6) estimated \$200.00 for a “come-along” and chain – the landlord stated she needed this equipment to lift the concrete lid for her septic tank, and the tenants took it.

The tenant's response to the landlord's claim was as follows. The tenant acknowledged putting a few holes in the walls to hang up pictures, but stated that she was not going to pay for the landlord to paint. The tenant stated that the landlord gave them the air filter. The tenant stated that the landlord never told them that they couldn't have their RV on the property, and it was only there for three weeks. The tenant stated that the driveway was damaged by trees that the landlord was cutting down. The tenant denied taking the shower curtain.

### *Tenants' Claim*

The tenants claimed compensation as follows:

- 1) \$120.75 for dump fees – the tenants provided receipts to show that they paid dump fees through the duration of the tenancy;
- 2) \$60.00 for a cable installation fee – the tenant stated that they had to have their own cable installed when the landlord disconnected the satellite TV;

- 3) \$86.05 for change of address fee to rental unit address at beginning of tenancy; and \$54.55 for change of address from rental unit at end of tenancy;
- 4) \$70.76 for payment for help; \$720.14 for gas and meal costs; and \$294.99 for truck rental to move out;
- 5) \$600.00 for rent overpayment for April 2015 – the tenants submitted copies of rent receipts, including a receipt indicating “April” and a second receipt dated “April 30”;
- 6) \$225.00 for pole shed – the tenants submitted that they paid for use of the shed but they were entitled to use of the shed as part of their tenancy agreement. The tenants submitted a receipt which appears altered from \$125.00 to \$225.00;
- 7) \$250.00 for 21 hours of the tenant’s time, at \$12.00 per hour, for preparing for dispute resolution;
- 8) \$4,200.00 for loss of quiet enjoyment from April to October 2015 – the tenant stated that the landlord is a drunk and she was constantly coming over to the rental unit or texting the tenants. In support of this claim, the tenant submitted copies of some text messages she received from the landlord, as well as some notes she made regarding the landlord’s actions, such as only wearing a bra and panties around the property in front of the tenants and their guests;
- 9) \$5,000.00 for pain and suffering – the tenants submitted that they moved into the rental unit for peace and quiet, but instead they were faced with a very stressful situation that impacted on their health; and
- 10) \$1,200.00 compensation equivalent to two months of rent, pursuant to the two month notice to end tenancy for landlord’s use – the tenant stated that the landlord told them her son was going to move into the unit, but he did not.

The landlord’s response to the tenants’ claim was as follows. The landlord stated that the tenants were not complying with the garbage pick-up schedule, which was why they incurred dump fees. The landlord stated that the agreement was that the tenants could have the same cable TV as she had, but they wanted to add several channels, so the landlord cancelled the cable. The landlord stated that the tenants altered the rent receipts and they did not pay twice for April rent. The landlord submitted her receipt book as evidence. The landlord submitted that the tenants breached every term of the verbal tenancy agreement, including: no composting; no children on the property; and no smoking in the rental unit.

### Analysis

Some terms of the tenancy agreement as well as aspects of both claims were not clarified for me sufficiently to make a determination. As each applicant must prove their claim, I therefore dismissed those portions of the claims for insufficient evidence.

### *Landlord’s Application*

I find that the landlord has failed to provide sufficient evidence to support most of her claim. The landlord did not do a move-in inspection, and she therefore cannot show the agreed-upon condition and contents of the unit at the beginning of the tenancy as compared to the end of the tenancy. I therefore dismiss landlord's claims for painting and repair costs; a shower curtain; and the come along and chain. The landlord has not provided sufficient evidence to show that the driveway was damaged by the tenants' RV, and this part of the claim is also dismissed. The verbal and written agreements regarding use of one or more sheds is unclear, and I therefore dismiss this portion of the landlord's claim.

I accept the landlord's evidence regarding the air filter. I do not find it likely that the landlord would simply give the tenants the air filter and allow them to take it with them when they moved. I therefore grant this portion of the landlord's claim, in the amount of \$338.51.

#### *Tenants' Application*

The tenants failed to provide sufficient clear evidence to show that they were entitled to recovery of dump fees. The evidence from both parties, however, shows that the tenants were entitled to at least some cable TV service that was included in their rent, and the landlord took away that amenity. I therefore grant the tenants' claim for the cable hookup fee of \$60.00.

The tenants did not make an application to dispute the two-month notice to end tenancy; rather, they chose to move out. They are therefore not entitled to any costs they incurred to move out of the rental unit and I dismiss those portions of their claim. I find no evidence to suggest that the landlord should be responsible for the tenants' cost to forward their mail to the rental unit at the outset of the tenancy; in fact, the tenants likely benefitted from this service during their tenancy.

The tenants did not provide sufficient clear evidence regarding overpayment of rent or payment for use of the shed. As noted above, the terms of agreement regarding the use of the shed were not made clear, and the tenants' copy of the receipt appears altered. I do not find it likely that the tenants would have failed to notice that they overpaid their rent by \$600.00 for one month. The tenants could have submitted further evidence, such as bank records, to support this part of their claim, but they did not.

The parties to a dispute resolution hearing are not entitled to recovery of any of their costs related to the process aside from the filing fee, and I therefore dismiss the portion of the tenants' claim regarding preparing for the hearing.

I accept the tenants' evidence that their quiet enjoyment was disrupted by the landlord on a regular basis. The landlord clearly did not behave in a professional manner. However, quiet enjoyment is only one aspect of the services and amenities for which the tenants pay rent. I therefore find it is not appropriate to grant the tenants recovery of their full rent for five months. I

grant the tenants an award of \$420.00, representing 10 percent of their rent for the months claimed. I do not find it appropriate to grant the tenants further compensation for pain and suffering, as they did not take timely steps to address the landlord's interference and only made their monetary claim after the tenancy ended.

The tenants were served with a two month notice to end tenancy for landlord's use, and the landlord failed to note a reason for serving this notice. The tenants stated that the landlord told them her son was going to move in but he did not. Under section 51 of the Act, the tenants are therefore entitled to compensation equivalent to two months of rent, in the amount of \$1,200.00.

#### *Filing Fees*

The landlord did not pay a filing fee.

As the tenants' application was partially successful, they are entitled to recovery of the \$100.00 filing fee for the cost of their application.

#### Conclusion

The landlord is entitled to \$338.51. The tenants are entitled to \$1,780.00. I grant the tenants an order under section 67 for the balance due of \$1,441.49. This order may be filed in the Small Claims Court and enforced 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: July 18, 2016

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Residential Tenancy Branch