



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Landlord R.A., the landlord's agent and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's agent (the landlord) and Tenant J.W. (the tenant) indicated that they would be primary speakers during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (Application) and an evidentiary package which were personally served to them on August 30, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord has been duly served with the Application and an evidentiary package.

The landlord testified that they sent their evidence to the landlord by way of registered mail. The tenant stated that they had not received the landlord's evidence; however, I find that the landlord provided the Canada Post tracking number which shows that a notice card was left in the tenant's mailbox. I find that the tenant not picking up their registered mail is not the responsibility of the landlord and that deemed service provisions pursuant to section 88 of the *Act* are not dependent on the tenant picking up their mail. For the above reasons, I will consider the landlord's evidence.

### Preliminary Matters

At the outset of the hearing the landlord and the tenant confirmed that there is a previous decision in which the matter of the security deposit was conclusively settled.

As the matter of the security deposit has been already decided, I decline jurisdiction as it cannot be decided again.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

Written evidence was provided that this tenancy began on June 01, 2014, with a monthly rent of \$2,300.00, due on the first day of each month

The tenant provided in evidence:

- Copies of pictures of the landlords' belongings piled up in a corner of the main floor barn area;
- A copy of a letter for breach of lease terms dated July 07, 2015, requesting the landlords remove their belongings from the main floor of the barn and that the landlord has ignored multiple written requests from the tenants for this to be done; and
- A copy of a Monetary Order Worksheet which shows the tenants' monetary claim based on storage fees for lockers of comparable size to the space being taken up by the landlords' belongings (10 feet by 10 feet or 6 feet by 12 feet). The monetary claim of \$2,946.00 is based on an average of \$79.62 per month for a storage locker, for a period of 37 months.

The landlord provided in evidence:

- A copy of a letter dated September 14, 2014, in which the tenants acknowledge that they verbally agreed to allow the landlord to use a smaller enclosed area (approximately 10 feet by 10 feet) inside the main barn area, an additional approximate  $\frac{1}{4}$  of the main floor barn area. The letter goes on to state that the landlord or associates continue to access this area without notice and the tenant requests for the landlord to remove these belongings.

The tenant testified that they are seeking compensation for belongings which have been stored on the main floor of the barn area, which took up a quarter of the floor and which were not removed upon the tenants' written request. The tenant stated that their tenancy agreement is for the exclusive use of the property and that they are seeking compensation for storing the landlords' belongings for 37 months. The tenant confirmed that they did not rent any lockers, only that they used the average fees from various storage places on which to base their monetary claim.

The landlord stated that the landlords' belonging were there at the beginning of the tenancy and that the rent was agreed upon with the items there. The landlord submitted that the tenants confirmed a verbal agreement for the storage of these belongings in previous correspondence with the landlord and referred to their evidence.

### Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and affirmed testimony, I find that the tenants have not demonstrated that they have suffered a loss due to the actions or neglect of the landlords.

I find that the tenants, in their letter dated September 14, 2014, confirmed that they were aware of the landlords' belongings in the main floor of the barn area and agreed upon the monthly rent while verbally agreeing for the landlord to store belongings there. I find that the tenants wanted to have the landlord remove the belongings from that area due to multiple people coming onto the property to retrieve various items and the fact that it reduced their own storage space; however, as stated above, I find that the tenants verbally agreed for the landlords to use the space on the main floor of the barn

area, and for this reasons I find that the tenants did not suffer a loss in the reduction of the value of their tenancy due to this verbal agreement.

I further find that the tenants have not demonstrated that they actually incurred a monetary loss as they confirmed in their testimony that their monetary claim was based on estimates of what a storage locker would cost and not any money actually spent to store the landlords' belongings or their own belongings due to the reduced storage space.

For the above reasons, I dismiss the tenants' request for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee from the landlord, without leave to reapply.

#### Conclusion

The tenants' Application is dismissed in its entirety, 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: December 05, 2018

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Residential Tenancy Branch