



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Li-car Management Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was reconvened in response to an application made April 24, 2019 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement of a house and the surrounding 8 acres started on February 1, 2016. Rent of \$1,800.00 was payable on the first day of each month. The Landlord collected \$900.00 as a security deposit and \$900.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenants.

The Landlord states that a fire in the unit occurred June 15, 2018 making the unit uninhabitable and that the Tenants moved out immediately. The Tenant states that the fire occurred on May 24, 2018 and that the Tenants moved out of the unit approximately 3 weeks later. The Parties agreed to conduct a move-out inspection of the exterior of the residence on June 13, 2018. The Landlord states that the Tenant left upset before it was completed. The Landlord completed the inspection and report only in relation to the exterior of the unit. The Landlord states that the Tenant was provided a copy of that move-out inspection report with its application. The Tenant states that it only received a description of events on move-out with reference to the security and pet deposit. The Landlord provides a copy of the move-in and move-out inspection report. It is noted that the Landlord indicates on the inspection report only that the Tenant did not sign the report.

The Landlord states that the Tenant provided its forwarding address about two weeks after the end of the tenancy. The Tenant states that it provided its forwarding address on June 12, 2018.

The Landlord provides an invoice and refers to photos provided as evidence claiming \$940.80 for holes left by the Tenant's dog that were not present at move-in and for the removal of logs left behind by the Tenants as follows:

- \$540.00 as costs to rent a compactor to repair the holes;
- \$300.00 as costs for the cost of a trailer to haul the logs;
- \$58.80 for gst and \$42.00 for pst.

The Tenant states that its dog does not dig holes and did not make the holes at the property. The Tenant states that there were two holes left from the previous tenancy along with 10" deep holes left from a horseshoe pit. The Tenant states that the logs were sold to the neighbour across the highway and were removed completely by the end of June 2018. The Tenant states that some of the logs were taken by the Tenants for their own use.

The Landlord states that the Tenants did not remove the logs which were removed by the Landlord approximately August 2018. The Landlord states that this took 8 hours of work. The Tenant states that the photos are not dated and that although not provided as evidence, the Tenant has a receipt for the logs that were sold.

The Landlord states that the Tenant removed a wire fence and wooden fence posts requiring its replacement. The Landlord claims \$110.88 as the costs of the wire. The Landlord states that it has no idea of the age of the fencing materials and that the owner has had the property for a long time. The Tenant states that the fence was close to 15 years old. The Tenant agrees that this fence was removed in 2017 stating that it was a hazard to its children, guests and animals. The Tenant states that it attempted to obtain permission for this removal from the owner sometime between May and September or October 2017. The Tenant states that the Landlord was informed of the need for repairs to the fence. The Tenant states that the Landlord and the owner did not agree on repairs. The Tenant states that the fence and posts were left in the shed in the yard, that most were rotten and that none of this was disposed of by the Tenant. The Landlord states that it has nothing showing the Tenants request for repairs and that the Landlord enjoys a good relationship with the owner. The Landlord states that nothing was in the shed at the move-out walkthrough and that the Tenant never said anything about the fence.

The Landlord sets out a monetary claim of \$11,253.24 for property restoration costs.

These costs are detailed within two invoices and are claimed as follows:

- \$290.00 for the cost of the owners use of its own tractor for two hours to remove the logs. The Landlord states that this is the charge out amount given to regular customers for the use of the tractor. The Tenant states that there was no need for a tractor as the logs were already gone and that as the owner used its own tractor the only costs incurred would be for the owner's time;

- \$435.00 for the costs to fill in ruts left by the Tenants alongside the gravel driveway and grass. The Landlord did not provide photos of this damage. The Tenant states that no ruts were left and that its truck was parked on the gravel in the middle of the roundabout;
- \$1,160.00 as labour costs to remove the dirt left after the Tenant removed the fence. The Landlord states that the fence was located throughout the land. The Landlord states that the amount claimed was for an employee's labour time of 8 hours. The Landlord states that the labour costs were to remove logs after which a huge area was left to be filled. The Landlord provided no photos for this claim. The Tenant states that the fence was only removed around the house and that no dirt was left behind. The Tenant states that it removed everything and filled the post holes to ensure safety. The Tenant states that no logs were left and that a huge area left was from the settlement of the pipeline areas and was pre-existing;
- \$870.00 for the costs to fill in the dog holes and the use of the compactor. The Tenant states again that their dog did not leave any holes;
- \$145.00 for the cost of the owner's labour for an hour using a tractor to clean up garbage from the pit. The Landlord states that this amount also reflects the machine time. The Tenant states that only ashes were left in the pit that is 2.5 feet across and 6 inches deep. The Tenant states that this should only have taken 10 minutes to clean out;
- \$1,740.00 as the labour costs to insert a new fence all over the property. The Tenant states again that the fence was only removed around the house areas and that it should not take the 12 hours claimed for driving in the posts in this area. The Tenant states that it should only have taken at the most 2 hours. The Tenant states that the owner also put in new gates across the driveway when there was none before;
- \$1,450.00 for the costs of new corners, supports and brace required to construct a gate around existing posts that were removed by the Tenant and that did not previously have any fence or gate. The Landlord states that a new fence had to

be put in place after the driveway was extended. The Landlord states that there is no knowledge of the age of the posts and believe that they were likely 7 or 8 years old. The Tenant states that as only 2 corner posts were removed it should only have taken an hour for this work;

- \$236.00 for the installation of all fence posts on the property. The Landlord states that while the Tenant only removed about ½ of the posts and then reassembled these, the work was not done properly, and the posts were compromised requiring all replacement. The Landlord states that the Landlord took reasonable steps to mitigate this cost by buying the posts in bulk. The Tenant states that the original posts were rotten and unsafe. The Tenant states that at move-in the Tenant brought in 20 to 30 new fence posts from an auction sale and that these were stored in the shed and left for the Landlord's use. The Tenant states that the Landlord could have used these posts. The Landlord states that only rotten posts were left in the shed and that these could not be used;
- \$870.00 as the costs to replace all patio pads that were in place around the house as walkways over ground that would become wet from rain. The Landlord states that the Tenant removed a few pads and placed them around the house. The Landlord states that the pads were quite old and maybe about 10 years old. The Landlord states that the Landlord also had to replace the remaining pads as they were left all chipped at the corners and as the Landlord could not find matching pads. The Tenant states that the pads removed were used to prevent water leakage into the house as they caused water to pool and created a risk of seepage into the unit. The Tenant states that a few of the pads not moved were damaged prior to the tenancy. The Tenant states that no permission was sought from the Landlord or owner as the previous manager had communication difficulties with the owner. The Tenant states that it therefore went ahead to prevent damage to the Tenant's furnishings and carpet. The Landlord states that in its experience the owner has always been available;

- \$110.88 as the labour and material costs to replace a wooden gate that the Tenants had removed. The Landlord does not know the separate costs for these items. The Landlord states that the hinges from the gate were found in the fire pit. The Landlord states that the original gate, made of pretreated wood was about 10 to 15 years and the same age as the patio blocks. The Landlord states that the costs claimed are for a metal gate. The Tenant states that the 3 foot by 3-foot gate was removed as it was damaged, rotten and unsafe to use. The Tenant states that a metal gate is more expensive than a wooden gate. The Tenant states that it is aware of the cost differentials for building materials as the Tenant is a carpenter. The Tenant estimates that a new wooden gate to replace the old one would only cost around \$30.00;
- \$546.56 as the supply costs for fencing wire that was all removed by the Tenant. The Tenant states that only the wire around the main yard was removed. The Tenant states that the removed wire was rolled up and left in the shed. The Tenant states that while it intended to return the wire it just never got around to this;
- \$290.00 for the costs to remove wooden pallets that the Tenant has bolted to the front brick wall of the house and for the costs to replace all the other pallets that were originally left scattered on the property by the owner. The Landlord states that a few pallets had been left by the owner to assist in moving items during the tenancy but does not know why such moving was expected. The Landlord does not know the separate costs for the removal of the bolted pallets and the material costs for all the pallets out of the amount claimed. The Tenant states that the pallets were repurposed by the Tenants and made into a fence to stop snow entering or blocking the house entrance. The Tenant states that this was attached by about 3 bolts to the step. The Tenant confirms that the Landlord's permission was not obtained for this work;
- \$370.00 for the costs of the owner's labour and travel time for delivering and using the owners own post pounder for the fence post replacement. The Landlord states that while it may have been cheaper to rent and contract the

labour, the work would not have been done to the owner's standard. The Tenant states that it should only have taken about 3 hours to replace the posts removed by the Tenant if the owner had of rented the post pounder and used its truck instead of the tractor to bring the pounder. The Tenant also states that the owner used the post pounder for unrelated upgrade work done to the property;

- \$208.74 for diesel costs diesel for the tractor and truck used for all repairs. The Landlord confirms that no receipts were provided for the diesel. The Tenant states that the owner could have reduced costs by driving a truck and renting items. The Tenant states that the costs for fuel would then only be about \$40.00; and
- \$940.80 for the costs of a compactor in relation to dog holes. The Landlord states that this amount was included by error as it has been identified as the first claimed amount on the monetary order worksheet.

The Tenant states that the owner of the unit is also the operator of the business that provided the invoice of \$11,253.24 for the Landlord's costs being claimed.

The Landlord states that the Tenants caused the fire that rendered the unit uninhabitable. The Landlord claims lost rental income of \$1,800.00. The Landlord states that the owner made an insurance claim for lost rental income for an unknown time but does not know the details of that claim. The Landlord states that the insurance claim has yet to be determined and that it has no evidence of the amount of deductible paid or payable by the owner for that claim. The Tenant states that the fire department condemned the unit and that it could not be occupied. The Tenant states that it suffered losses as a result of the fire and that the Landlord should have insurance to cover the losses associated with the fire.

The Landlord states that it has no knowledge in relation to the return or retention of the security and pet deposit. The Tenant states that the Landlord has not returned either of the deposits.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Section 21 of the RTB Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

The inspection report notes only that the yard at move-in was snow covered and that at move-out the lawn was destroyed with gravel. The Landlord provided no move-out photos of any holes or of the yard. Given the Tenant's evidence of pre-existing damage and holes, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left dog holes. I therefore dismiss the claim for \$540.00 as costs to rent a compactor to repair the holes and \$870.00 for the costs to fill in the dog holes and the use of the compactor.

Given the inspection report noting logs to be hauled away and the Landlord's photo of logs, I find on a balance of probabilities that the Tenants did leave the logs. Given the invoice for costs to remove the logs I find that the Landlord has substantiated an entitlement to **\$300.00** as costs for the cost to rent a trailer to haul the logs and **\$290.00** for the cost of the owner's use of its own tractor for two hours to remove the logs.



As there is no evidence setting out the proportionate amount of taxes paid for either the compactor or the trailer rental, I dismiss the claim for taxes claimed in relation to the hole and log damages.

### Fence

Guideline #40 of the Policy sets the useful life of a wood fence at 15 years and the useful life of a metal, steel or chain link fence at 25 years. Based on the undisputed evidence that the Tenant removed a portion of the wire fence and posts from around the yard without the Landlord's permission and given the inspection report noting a cost of \$500.00 for the fence damage, I find that the Landlord has substantiated that the Tenant caused damage to the wire fence for that portion only. However, based on the undisputed evidence that the fence was either 15 years old or very old and given the Tenant's evidence of rotten posts, I find that the posts no longer had any value to them and were likely in need of removal for safety purposes. As there is no reference to a wire fence in the policy guideline, as the Landlord gave no evidence of any useful life of the fence and as given the undisputed old age of the fence, I find that the original wiring also had no value to them at the end of the tenancy. Additionally, the Tenant cannot be held liable for the entire fence replacement that was not removed by the Tenant and that also had no value. I consider therefore that the Tenant did not cause the loss claimed by the Landlord and that the Landlord is only entitled to a nominal amount of **\$200.00** for the breach of the Act. I therefore dismiss the claims for \$110.88 as wire costs, \$1,160.00 for labour costs to remove the dirt left after the Tenant removed the fence, \$1,740.00 as the labour costs to insert a new fence all over the property, \$236.00 for the installation of all fence posts on the property, \$546.56 as the supply costs for fencing wire that was all removed by the Tenant, and \$370.00 for the costs of the owner's labour and travel time for delivering and using the owners own post pounder for the fence post replacement

### RUTS

Given that there are no photos of any ruts or a driveway, as the inspection report does not note any ruts along a driveway and considering the Tenant's evidence that no ruts were left, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left any ruts. I therefore dismiss the claim of \$435.00 for the costs to fill in ruts left by the Tenants alongside the gravel driveway and grass.

### PIT

Given that there are not photos of any pit containing garbage, as the inspection report does not note any damage to a pit or garbage left behind, and given the Tenant's evidence no damage left to the pit, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused damage to the pit by leaving garbage in it. I therefore dismiss the claim of \$145.00 for the cost of the owner's labour for an hour using a tractor to clean up garbage from the pit.

### Patio Pads

Policy Guideline #40 provides that concrete slabs have a useful life of 10 years. Based on the undisputed evidence that the Tenant removed patio pads without permission, I find that the Landlord has substantiated that the Tenant breached the Act by this removal. However, given the Landlord's evidence that the pads were quite old and maybe as much as 10 years old I find that there was no longer any useful life left to the pads and that the Landlord is not entitled to replacement costs of \$870.00. Given the Tenant's breach of the Act in removing the pads I find that the Landlord is entitled to a nominal sum of **\$100.00** for this breach.

### Wooden Gate

Although there is no dispute that the Tenant removed a wooden gate, based on the Landlord's evidence of the age of the gate I find that the gate no longer had any useful life and that the Landlord has not substantiated the costs claimed for a new metal gate and I dismiss the claim for \$110.88. As the Tenant did remove the gate and as there is no evidence of having obtained permission to remove the gate, I find that the Landlord

has substantiated that the Tenant breached the Act. Given the Tenant's estimation of costs of **\$30.00** to replace the gate I find that the Landlord is entitled to this nominal sum for the Tenant's breach.

#### Wooden Pallets

Given the Landlord's evidence that pallets were left scattered on the property by the Landlord I consider that the Landlord did not consider these items as holding much value. I find therefore that the Landlord has not substantiated the costs claimed to replace the pallets. However, given the Tenant's evidence that it used these pallets without permission I find that the Landlord has substantiated a nominal sum of **\$100.00** for the Tenant's breach.

#### Posts

The Landlord's evidence on the claim for gate construction around posts that were apparently removed by the Tenant is not clear and I cannot determine the relationship between the costs claimed and the undisputed evidence of damage only as a result of the removal of posts. For this reason, I find that the Landlord has not provided sufficient evidence to support the claimed amount. However, given the evidence of the breach by the Tenant in removing posts without evidence of permission from the Landlord I find that the Landlord has substantiated a nominal amount of **\$100.00** for that breach.

#### Diesel

As the Landlord has not been found entitled to costs for all the repairs claimed I find that the Landlord is not entitled to the costs for all the repairs made. As there is no evidence to set out separate diesel costs for each of the repairs the were claimed I am unable to determine any costs. Further the Landlord provided no receipts for these costs. I therefore dismiss this claim for \$208.74 for diesel costs diesel for all repairs.

#### Lost Rental Income

Without determining whether the Tenant caused the fire that led to the house being uninhabitable, given the Landlord's evidence that it has made an insurance claim on lost rental income for an unknown number of months and that this claim has yet to be determined, I consider that the Landlord has not substantiated an actual loss. Further there is no evidence of insurance deductible paid for this claim. For these reasons I find that the Landlord has not substantiated an entitlement to its claim for a month of lost rental income and I dismiss this claim.

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,320.00**.

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has made at least two offers for the inspection and the tenant has not participated on either occasion. The Landlord did not set out in any part of its application or in its oral evidence given at the hearing that the Tenant's right to claim return of the security deposit was extinguished. Nonetheless, the Landlord provided undisputed evidence that the Tenant failed to participate for the complete inspection. As such I find on a balance of probabilities that the Tenant's right to return of the security deposit has been extinguished.

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 38(2) of the Act provides that the above subsection does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 36 (1). As the Tenant's right to return of the security deposit has been extinguished, I find that the Landlord is not required to repay the Tenant

double the combined security and pet deposit. Deducting the Landlord's entitlement of **\$1,320.00** from the combined security and pet deposit plus zero interest of **\$1,800.00** leaves **\$480.00** to be returned to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$480.00**. If necessary, 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 RTB under Section 9.1(1) of the Act.

Dated: January 22, 2019

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Residential Tenancy Branch