



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MND, MNSD, RPP, FF

### Introduction

These two hearings dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant applied for a monetary order for compensation under the Act or tenancy agreement, for an order for the Landlord to return the Tenant's personal property, and to recover the filing fee for the Application.

The Landlord applied for a monetary order for damage to the rental unit, for unpaid rent, for money owed or compensation under the Act or tenancy agreement, to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I note that the Tenant supplied late evidence which was not considered. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to monetary compensation? Is the Tenant entitled to the return of his property?

Is the Landlord entitled to monetary compensation as sought in his Application?

### Background and Evidence

This tenancy began more than 10 years ago. The Tenant rented from a prior owner, and the current Landlord, as named herein, apparently inherited the property. The Tenant testified that he paid the previous owner of the rental unit a security deposit of \$275.00, in or about February of 2000. No written tenancy agreement was submitted in evidence by the parties.

The Landlord testified that the Tenant had testified he an earlier hearing that the security deposit was \$225.00. He further testified that the tenancy began in 2001, not 2000.

In the fall of 2010, the Landlord and the Tenant had a falling out over employment issues unrelated to the tenancy. The parties became involved in three dispute hearings. In the third hearing the Dispute Resolution Officer determined the tenancy ended on March 19, 2011, and granted the Landlord an order of possession for the rental unit dated April 4, 2011, to be effective two days after service on the Tenant.

The evidence submitted indicates the Tenant was served with this order shortly after the hearing. The Landlord agreed that he would not enforce the order of possession until April 30, 2011, as the Tenant had a person in the family with health issues.

### The Tenant's Claims

The Tenant testified that he is a professional landscaper. He testified that over the past eight years of the tenancy he developed the property where the rental unit is located and he performed work for the Landlord at the Landlord's summer cottage.

The Tenant testified he developed a large area in front of the rental unit where he put in a garden, installed concrete pavers, put down sidewalk blocks, and planted flowers, shrubs and cedar trees. He testified that the blocks and concrete were given to him by friends and neighbours.

The Tenant testified that on April 30, 2011, the Landlord forced him to leave the rental unit before the Tenant had completed cleaning the rental unit or returning the property to its condition prior to the tenancy beginning. The Tenant testified he wanted to remove most of the materials he had installed.

He testified that on April 30<sup>th</sup> he had planned to take up the concrete sidewalk blocks he had installed in the patio and garden, remove paving stones he had put in front of the rental unit, remove plants and shrubs he had planted at the rental unit, and lay down

sod to cover the garden. The Tenant also had cleaning supplies with which he intended to clean the rental unit on the 30<sup>th</sup> of April.

The Tenant testified he was unable to complete these tasks because the Landlord insisted he leave the rental unit on the 30<sup>th</sup> of April.

The Tenant testified that the Landlord told the Tenant he had to leave that day and could not dig up the trees or remove the paving stones or blocks.

According to the evidence of both parties the Landlord agreed at this time to pay the Tenant \$1,000.00 for the cedar trees the Tenant had planted. The Landlord testified that he had offered this money as he knew the Tenant and his significant other were going through difficult time due to the health issues in the family. The Landlord also testified that he only offered the money on the condition that the Tenant remove all his personal possessions from the rental unit and property. The Tenant denied any such requirements.

The Tenant claims \$4,000.00 for the value of the plants, trees, shrubs, paving stones and sidewalk blocks, left at the rental unit. The Tenant has not supplied any invoices or receipts for the items he claims for.

The Landlord and his spouse testified that they did not agree with the Tenant he could re-landscape the rental unit property.

The Landlord's understanding was that the Tenant was required to bring the property back to the state it was at the outset of the tenancy. The Landlord was upset that he had given the Tenant extra time after receiving the order of possession, yet nothing appeared to be completed on April 30, the last day of the tenancy.

The Landlord alleges the Tenant's landscaping is far from professional, as the Tenant planted rose bushes in between the cedar trees.

The Landlord testified that on the 29<sup>th</sup> of April the rental unit was empty and he was unaware that the Tenant intended on doing all these tasks the next day. The Landlord testified he did not think it was possible for the Tenant could perform all of the tasks he wanted to, in one day.

The Landlord further testified that the Tenant returned to the property after April 30, in order to continue to remove personal property in the yard and retrieve mail. The Landlord was upset and alleged the Tenant was trespassing. This led to the Tenant

leaning over the fence from the neighbour's yard to remove items, such as his wheelbarrow.

The Tenant replied that the Landlord was well aware of the work he was doing around the rental unit and never told him to stop or that he would have to return the property to its original state.

### The Landlord's Claims

Much of the facts of this case have been explained above, and therefore, I do not recount them in outlining the Landlord's claims.

According to the testimony of the Landlord the Tenant refused to do an outgoing condition inspection report on April 30, 2011. I note there is no evidence that an incoming condition inspection report was performed.

The Landlord claims the Tenant did not pay him any rent for the use and occupancy of the rental unit during the month of April, 2011, and he claims \$600.00 for this.

The Landlord claims the Tenant did not clean the stove, cupboards, or windows before vacating the rental unit, and claims \$120.00 for this.

The Landlord claims that the Tenant did not repair the walls, repaint as necessary, or scrape the top of the kitchen cabinets clean, and the Landlord claims \$300.00 for this.

The Landlord testified he did not want the plants, trees or shrubs or any of the Tenant's brick or pavers left at the rental unit. He hired a landscaping company to provide an estimate of the cost of returning the property to its original state. The Landlord claims \$168.00 for the cost of receiving an estimate from the company, and \$2,716.00 to return the property to its original state.

The Landlord used a lawyer to communicate with the Tenant during the month of April, and the lawyer was retained to pay the Tenant a sum awarded at the previous hearing, and the Landlord claims \$450.00 for this.

The Landlord claims \$375.00 for cleaning the yard and removing debris left behind by the Tenant.

The Landlord claims the Tenant removed a ladder and a lawn mower from the property which belonged to the Landlord, not the Tenant, and claims \$579.98 for this.

The Landlord has supplied invoices, receipts, estimates and photographs in support of the above claims.

In reply, the Tenant agreed he probably left a few things to do at the rental unit when he vacated. He agreed that he did not clean the top of the cupboards or the windows. He testified he was prepared to do, "... whatever was necessary..." when he arrived at the rental unit on the 30<sup>th</sup> of April.

The Tenant disputed that the landscaping company should charge a fee to do a consultation, as the Tenant does not charge for this.

The Tenant agreed he took the ladder and explained he did this in lieu of a trade for a covered parking area. He testified he had removed the lawnmower because it was not working anymore and he paid to get rid of it.

In reply, the Landlord alleged that the Tenant forgot that he was not the owner of the property. The Landlord testified he does not like the property as it was left by the Tenant.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Here both the Tenant and the Landlord have made claims against each other.

The burden of proving a claim in damages requires four elements:

- a) the damage or loss alleged must be established as having occurred;
- b) that the damage or loss was a result of a breach of the tenancy agreement or *Act*;
- c) that there be verification of the actual loss or damage claimed; and
- d) proof that the claiming party took all reasonable measures to mitigate their loss.

Section 37 of the Act requires that a tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends, and that the Tenant must leave the rental unit reasonably clean, and undamaged, except for reasonable wear and tear.

I have also reproduced relevant portions of policy guideline 1 to the Act:

### **RENOVATIONS AND CHANGES TO RENTAL UNIT**

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

### **PROPERTY MAINTENANCE**

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

### **Tenant's Claims**

I find the Landlord and the Tenant did agree that the Landlord would pay the Tenant the sum of \$1,000.00 for the cost of the cedar trees. I award the Tenant this amount, plus \$15.00 towards his filing fee for the Application, subject to the offset described below. I have reduced the amount awarded for the filing fee for the Application, due to the limited success of the Tenant.

I find there is insufficient evidence from the Tenant to establish that a security deposit was paid to the Landlord or to prior owner of the rental unit.

I find the Tenant had insufficient evidence to verify any of his alleged losses or claims, and that the Tenant failed to prove that the Landlord breached the Act or the tenancy agreement.

Therefore, I dismiss the remainder of the Tenant's Application.

#### Landlord's Claims

I find the Tenant breached the Act when he failed to clean the rental unit to a reasonable standard when he vacated the rental unit. I allow the Landlord \$120.00 for cleaning the rental unit and \$300.00 for the repair of walls and scrapping of the kitchen cabinet tops, subject to the offset below

I further find the Tenant breached the Act in not paying the Landlord rent for use and occupancy in April 2011. I allow the Landlord \$600.00 for rent for the month of April, subject to the offset below.

The legal fees incurred by the Landlord are not recoverable under the Act, and this portion of the claim is dismissed.

I find the Landlord had provided the Tenant with ample time throughout April of 2011, to perform the cleanup of the rental unit and yard, and remove any materials belonging to the Tenant in the unit or in the yard.

I find the Tenant had an unreasonable expectation of what work he could do on the last day of the tenancy. I find the Tenant did not act in a timely fashion to clean the rental unit or remediate the property, and therefore, the Tenant failed to mitigate his losses.

I find the Tenant failed to return the property to its original condition at the end of the tenancy. Nevertheless, I also find that the Landlord provided insufficient evidence to prove he had returned the property to its original state. I was also not satisfied, on a balance of probabilities, that the Landlord actually intended to return the property to its original state. I also note that neither party had substantive evidence as to the condition of the property prior to the start of the tenancy. Therefore, it is unlikely any determination could be made as to the original state of the property. I further find the Landlord provided no evidence of the amount the value of the property fell short of the

value it would otherwise have been, without the alterations of the Tenant. Therefore, I dismiss this portion of the Landlord's claims.

I do find the Tenant failed to clean the yard and remove debris and I allow the Landlord \$375.00 for this, subject to the offset below.

I find the Tenant removed a ladder and a lawn mower from the property which belonged to the Landlord. The Landlord provided quotes on these items, but these were for new items and the Landlord had no evidence on the age of the items actually removed. Therefore, I award the Landlord the nominal amount of \$75.00 for these, subject to the offset below.

I allow the Landlord \$50.00 for the recovery of a portion of the filing fee for the Application, as the Landlord also met with only partial success.

#### Offset

I find the Tenant has established a monetary claim of \$1,015.00 against the Landlord and the Landlord has established a monetary claim of \$1,470.00 against the Tenant.

Pursuant to the Act, I order the amounts be offset, and I grant the Landlord a monetary order in the amount of **\$455.00** against the Tenant.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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 22, 2011.

---

Residential Tenancy Branch