



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 14, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for mowing the lawn and to keep all or part of the security deposit?

### Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on December 01, 2015;
- the Tenants paid a security deposit of \$650.00;
- a condition inspection report was completed on December 04, 2015;
- the Tenant was to mow the lawn during the tenancy;
- the tenancy ended on September 01, 2016;
- the female Tenant and the Landlord's son signed a final condition inspection report on September 01, 2016;
- the final condition inspection report indicates the rental unit is clean and in good repair;
- the Tenants provided the Landlord's son with a forwarding address, in writing, on September 01, 2016;
- the Landlord has not returned any portion of the security deposit; and

- the Landlord does not have written authority to retain any portion of the security deposit.

The Landlord is seeking compensation, in the amount of \$208.50, for mowing the lawn. In regards to this claim the Landlord stated that:

- in August of 2016 the grass in the yard was “knee high”;
- the grass was so high that it could not be cut with his lawn mower;
- a few days prior to August 06, 2016 he told the male Tenant to mow the lawn;
- the Landlord had the lawn was mowed on August 06, 2016, August 08, 2016, and August 15, 2016;
- sometime in September he removed the lawn waste from the residential property; and
- he does not know how long the grass was on September 01, 2016.

In response to the claim for mowing the lawn the male Tenant stated that:

- the grass was quite long in August of 2016;
- sometime in early August the Landlord told him to mow the lawn and he assured him it would be mowed, although he did not tell him when it would be mowed;
- the Landlord had the lawn mowed twice in August of 2016;
- the lawn waste was removed sometime in the middle of August of 2016; and
- he cut the grass approximately three days prior to the end of the tenancy.

The Landlord submitted a document that declares the cost of removing lawn waste, which is dated August 15, 2016. The Landlord stated that he wrote this document on August 15, 2016 even though the waste was not removed until September.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant was obligated to mow the lawn at the rental unit during the tenancy.

Section 32(2) of the *Residential Tenancy Act (Act)* stipulates that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. As there is no evidence that causes me to conclude that allowing the lawn to grow to an excessive height breaches any health, cleanliness or sanitary standards, I cannot conclude that the Tenants breached section 32(2) of the *Act* when they did not cut the lawn for an extended period.

As the Landlord has submitted insufficient evidence to establish that the Tenants breached section 32(2) of the *Act* when they did not cut the lawn for an extended period, I find that the Landlord is not entitled to compensation for the cost of mowing the lawn in August of 2016.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit at the end of the tenancy the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. This, in my view, includes mowing the lawn at the end of the tenancy whenever a tenant is required to mow the lawn during the tenancy.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary I find that the lawn was mowed shortly before this tenancy ended on September 01, 2016. I therefore find that the Landlord has submitted insufficient evidence to establish that the Tenants did not comply with section 37(2)(a) of the *Act* in regards to the lawn. As the Landlord has failed to establish that the lawn needed mowing at the end of the tenancy, I find that the Landlord is not entitled to compensation for mowing the lawn at the end of the tenancy.

I find that it was not necessary for the Landlord to mow the lawn prior to the end of the tenancy. Had the Tenants not mowed the lawn by the end of the tenancy I would have found that the Landlord was entitled to the cost of mowing the lawn. Although the Landlord opted to mow the lawn prior to the end of the tenancy I find that he is not entitled to compensation for mowing the lawn, as I find it entirely possible that the Tenants would have ensured the lawn was mowed prior to the end of the tenancy, thereby complying with section 37(2)(a) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that lawn waste was left on the residential property after the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that waste was left on the property at the end of the tenancy. Conversely, I find condition inspection report that was signed on September 01, 2016, which declares rental unit is clean and in good repair, corroborates the male Tenant's testimony that the waste was removed in the middle of August of 2016.

I find that the a document that declares the cost of removing lawn waste, which is dated August 15, 2016, further corroborates the males Tenant's testimony that the waste was removed in the middle of August of 2016. I find that Landlord's testimony that this document was written on August 15, 2016 even though the waste was not removed until September lacks credibility.

As the Landlord has failed to establish the merits of his claim, I dismiss his application for compensation. As the Landlord has failed to establish that he has the right to retain any portion of the Tenants' security deposit, I find that the entire deposit of \$600.00 must be returned to the Tenants.

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has failed to establish a right to any portion of the Tenants' security deposit and the entire deposit of \$600.00 must be returned to the Tenants. I therefore grant the Tenants a monetary Order for \$600.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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 *Act*.

Dated: February 28, 2017

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Residential Tenancy Branch