



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNC, MNR, MNDC, MNSD, FF

## Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent and utilities as well as to keep all or part of a security deposit and to recover the filing fee for this proceeding. The Tenants applied to cancel a Notice to End Tenancy for Cause and for a Monetary Order for compensation for loss or damage under the Act or tenancy agreement as well as to have a security deposit returned and to recover the filing fee for this proceeding. At the beginning of the hearing, the Tenants abandoned their application to cancel a Notice to End Tenancy.

## Issue(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Are the Tenants entitled to compensation for damages and if so, how much?
3. Are the Landlords entitled to keep all or part of a security deposit?

## Background and Evidence

This tenancy started on February 1, 2009 and ended on February 28, 2009. Rent was \$1,150.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$575 on January 5, 2009.

On February 7, 2009, the Landlords served the Tenants with a One Month Notice to End Tenancy for Cause alleging the Tenants had significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Notice incorrectly set out an effective date of March 11, 2009 when the Tenants would have to move out if they did not dispute the Notice.

The Tenants said they felt the Notice was unjustified in that they did not make a lot of noise which was the reason given by the Landlords for issuing the Notice. The Tenants also said they decided to move rather than dispute the notice because they were concerned about being able to find other accommodations with 3 small children. As a result, on February 7, 2009 the Tenants put a non-refundable deposit down on another rental unit for March 1, 2009. It was not until February 11, 2009 that the Landlords

advised the Tenants that the effective date on the Notice should have stated March 31, 2009. The Tenants said they told the Landlords they found a new rental unit for March 1, 2009.

On February 28, 2009, the Landlords discovered the Tenants were moving out and advised them that they were still liable for March rent and needed to give written notice they were ending the tenancy so they would not also be liable for April rent. The Tenants gave written notice later that day. The Landlords said they advertised the rental unit for rent in a local newspaper and in an on-line publication shortly after the Tenants gave their notice at a lower rate of rent. The Landlords said the rental unit was re-rented as of April 1, 2009.

The Landlords argued that despite the fact that the tenancy only lasted for one month, it was a term of the tenancy agreement that the carpets would be cleaned at the end of the tenancy. The Landlords claimed they initially estimated the cost would be \$200.00 but later had them cleaned for \$103.00.

### Analysis

In this case, I find that the Tenants decided not to dispute the Notice but instead to move out. Although the effective date of the notice was incorrect, I find that this does not make a difference to the outcome as the Tenants would be liable for rent for all of March even if they moved out as late as March 11, 2009.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice. Consequently, the earliest the Tenants could have ended the tenancy would have been March 31, 2009. As a result, the Landlords are entitled to recover loss of rental income for March, 2009.

In the absence of a receipt for carpet cleaning, I find there is insufficient evidence in support of this part of the Landlords' claim and it is dismissed. As the Landlords have been successful in this matter, they are entitled to recover their \$50.00 filing fee for this proceeding. I order pursuant to s. 38(4), 62(3) and 72 of the Act that the Landlords keep the Tenants' security deposit in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Loss rental income:	\$1,150.00
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$1,200.00

Less: Security Deposit:	(\$575.00)
Accrued interest.	<u>(\$0.00)</u>
Balance Owing:	\$625.00

I find there is no evidence of a material breach of the tenancy agreement as alleged by the Tenants and their application is dismissed.

### Conclusion

The Tenants' application is dismissed. A monetary order in the amount of **\$625.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.