



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside notices to end this tenancy and a monetary order and an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

At the hearing the parties agreed that the tenancy ended on or about December 22. As the tenants have vacated the rental unit, I consider their claims for orders setting aside the notices to end tenancy to have been withdrawn.

### Issues(s) to be Decided

Should the landlord be held responsible for the cost of the tenants' move?

Are the tenants obligated to pay rent for the month of December?

Is the landlord entitled to be compensated for time and labour expended cleaning the back yard?

### Background and Evidence

The parties agreed that the tenancy began in May 2009 at which time a \$625.00 security deposit was paid. Monthly rent was set at \$1,250.00 per month. The rental unit is a secondary suite which was part of the residential property on which the landlord also resided. On or about October 8, 2009 the landlord received notice from the Regional District of Nanaimo advising that the rental unit was not in compliance with

zoning bylaws. The landlord met with a representative of the building inspection department and was advised that they must convert the residential property back into a single family dwelling. The landlord initially had a conversation with the tenant D.A. at which time they advised her that the tenancy must end. When the landlord came to the door to speak with the tenants, the tenant D.A. was on the telephone speaking with the tenant G.A. G.A. testified that he could hear the conversation between the landlord and D.A. Both tenants testified that D.A. asked the landlord if they would be given one month free rent, to which the landlord replied "yeah, yeah," which the tenants took to be a promise. Shortly thereafter the landlord served the tenants with a one month notice to end tenancy for cause which stated that the rental unit had to be vacated to comply with a government order. The tenants wrote a letter to the landlord advising that they would not be paying rent in the month of December, to which the landlord responded by serving them with a 10-day notice to end tenancy for unpaid rent.

The tenants seek a monetary order for \$190.97 in moving costs as they claim the landlord had an obligation to advise them that the rental unit was an illegal suite and they would not have rented the unit had they known it was an illegal suite. The tenants testified that at the time they made their rental application, they specifically asked the landlord if there were any problems with the suite that might result in them being unable to enjoy a long-term tenancy and were told that there were no problems. The landlord took the position that the tenants should have known the rental unit was an illegal suite because he told them from the outset of the tenancy that he would collect their mail and distribute it to them rather than giving them their own mail key.

The landlord seeks an order for unpaid rent for December, the cost of repairing damages to the rental unit, compensation for his time spent preparing for dispute resolution, compensation for an hour spent removing dog waste from the back yard and the cost of rekeying locks to the rental unit as the tenants vacated the unit on December 22 but did not return keys until December 24. The landlord had not performed any repairs to the unit as of the date of the hearing and did not have estimates for the cost of repairing damage, nor had he rekeyed the locks. The tenants took the position that

they did not have to pay rent in December based on their understanding that the Act required the landlord to compensate them with one month's free rent under these circumstances. The tenants acknowledged that they had a dog who defecated in the back yard, but testified that they regularly cleaned up after their dog, having done so the day before they vacated the rental unit. The tenants further testified that the landlord also had a dog who would defecate in the yard and they had witnessed at least two other dogs in the neighbourhood doing the same. The landlord denied that his dog defecated in the yard.

### Analysis

First addressing the landlord's claim, I find that the landlord has established an entitlement to rent for the month of December. The tenants had no entitlement under the Act for one month's free rent in compensation for being served with a notice to end tenancy to comply with a government order. I do not accept that the landlord's alleged promise to give them one month's free rent is enforceable. Absent a statutory entitlement, the tenants would have to prove that they had a contractual arrangement with the landlord whereby he was obligated to grant them one month's free rent. Even if the landlord did promise to give them free rent, the tenants would have to prove that they offered some sort of consideration for that promise, i.e. that both parties benefitted from the contract. I am unable to find any consideration flowing from the tenants and therefore find that the landlord is not obligated to provide free rent for the month of December. The landlord is awarded \$1,250.00.

In order to establish his claim for compensation for time spent cleaning the back yard, the landlord must prove that it was the tenants' dog that produced the waste found in the yard. I find that the waste in the back yard could have belonged to the tenants' dog, to the landlord's dog or to any other of the dogs that visited the yard. Accordingly I dismiss the landlord's claim.

The landlord applied for compensation for damages which he had not yet completed and for which he had not obtained professional estimates. I dismiss the claim for the

cost of repairs with leave to reapply as the landlord is unable to prove the quantum of his claim at this point and the claim is therefore premature. The claim for the cost of rekeying locks is dismissed without leave to reapply as the tenants returned the keys before the landlord rekeyed the locks and therefore rendered the rekeying needless. The landlord's claim for compensation for his time spent preparing for dispute resolution is dismissed as the only litigation-related cost I am empowered to award under the Act is the cost of the filing fee paid to bring the application.

Turning to the tenants' claim, I find that the landlord did not clearly explain to the tenants at the outset of the tenancy that the rental unit was illegal. I find that the landlord's failure to inform the tenants' of this fact deprived them of the opportunity to make an informed decision regarding whether to risk living in an illegal suite and therefore the landlord must bear the cost of damages which flowed from his actions. The landlord financially benefited from the illegal suite during the tenancy and must bear the loss flowing from that illegal action as well. I award the tenants \$190.97 in moving costs.

As each of the parties have enjoyed at least partial success, I find it appropriate that each of the parties bear the cost of their own filing fees.

### Conclusion

The tenants have been awarded \$190.97. The landlord has been awarded \$1,250.00. Setting off these awards as against each other leaves a balance of \$1,059.03 payable to the landlord. I order the landlord to retain the \$625.00 security deposit in partial satisfaction of the claim and grant the landlord a monetary order under section 67 for the balance owing of \$434.03. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: January 18, 2010

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