



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage to the rental unit, unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied for compensation for damage and loss under the Act; return of the deposit paid and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

Each party failed to serve the other with their evidence submissions. I found that the only evidence I would reference were the tenancy agreement, the 2 month notice ending tenancy issued by the landlord on March 22, 2010 and a copy of an agreement to end the tenancy.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damages to the rental unit?

Is the landlord entitled to compensation for unpaid rent?

May the landlord retain the deposit in satisfaction of her claim for compensation?

Are the tenants entitled to compensation under the Act?

Are the tenants entitled to return of the deposit paid?

Is either party entitled to filing fee costs?

### Background and Evidence

This tenancy commenced on August 1, 2008, rent was \$1,600.00 per month due on the 31<sup>st</sup> day of each month. A deposit in the sum of \$800.00 was paid on July 10, 2008.

The landlord has claimed compensation in the sum of \$572.06; no detailed calculation of this claim was provided on the application other than reference to keys, damage, cleaning, removal of belongings and claims for hydro and gas.

The tenants requested one month's compensation in the sum of \$1,600.00 and refund of their \$800.00 deposit.

On March 22, 2010, the landlord issued a 2 month notice ending tenancy for landlord's use of the property. The notice indicated that the landlord had all the necessary permits and approvals required to renovate the unit, requiring vacant possession.

The tenants began to seek alternate accommodation and on May 14, 2010, they contacted the landlord to request additional time to vacate, with a move-out date of June 30, 2010; the landlord agreed. The landlord then attended at the rental unit that evening and asked the tenants to sign a document agreeing to end the tenancy on June 30, 2010.

The landlord stated that by signing an agreement to move out on a date other than that indicated as the effective vacancy date on the March 22, 2010, notice; the tenants had forfeited their right to compensation under the Act.

The tenants submitted that they moved out as the result of the notice issued, that they purchased a home and only asked for a delayed move out date so that they could comply with the notice given by the landlord.

The tenants moved out on June 30 and sent the landlord their forwarding address via registered mail on July 6, 2010. The landlord applied claiming against the deposit on July 21, 2010. Condition inspections were not completed.

The landlord did not serve the respondents with any evidence verifying her monetary claim and testified that the tenants owed her for the costs of keys that were not returned, damage and garbage left behind.

The tenant stated they did return the keys and that they cleaned the home and did not leave anything behind except garbage that was placed at the curb side for pick-up.

Both parties mentioned attempts by the landlord to sell the home a number of months ago. Once the tenants signed the agreement that they would vacate the home on June 30, 2010, the landlord listed the home for sale. The parties both expressed an understanding that the landlord does not appear to have pursued any renovation to the home.

During the hearing the parties reached a settled agreement in relation to the utilities costs; the tenant agreed the landlord is entitled to \$104.80.

### 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. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord's application did not set out a detailed calculation of her monetary claim. During the hearing the landlord's claim for damages and key costs were disputed by the tenants. No inspection reports were completed at either move-in or move-out.

Therefore, in the absence of condition inspection reports, which are required pursuant to sections 23 and 35 of the Act; that would have provided an accurate record of the state of the unit at the start and end of the tenancy and, based upon the disputed testimony, I find, on the balance of probabilities, that the landlord's claim for compensation is unsupported and is dismissed.

In relation to the tenant's claim for compensation as the result of having been served notice ending tenancy for landlord's use; section 51(1) of the Act provides:

**51 (1) A tenant who *receives* a notice to end a tenancy under section 49 [landlord's use of property] *is entitled* to receive from the landlord on or before the effective date of the landlord's notice an amount that is the *equivalent of one month's rent payable under the tenancy agreement*.**

(Emphasis added)

I find that the tenants received a notice ending tenancy under section 49 of the Act. The tenants vacated the rental unit as a direct result of the notice. The agreement to extend the vacancy date in no way relieved the landlord of her obligation under section 51(1) of the Act and I find that the tenants are entitled to receive compensation equivalent to one month's rent in the sum of \$1,600.00 as required by section 51(1) of the Act.

I find that the landlord did claim against the deposit within 15 days of having received the tenant's written forwarding address effective July 11, 2010.

As the landlord's claim against the deposit has not succeeded I find that the tenants are entitled to return of their deposit in the sum of \$800.00, less the sum of \$104.80 agreed to by the parties as the amount owed for utilities.

As both applications had some merit I decline filing fee costs to either.

### Conclusion

I find that the tenants have established a monetary claim, in the amount of \$2,295.20, which is comprised of \$1,600.00 compensation and return of the deposit less hydro costs.

The landlord's claim for hydro costs is settled. The balance of the landlord's claim is dismissed.

Based on these determinations I grant the tenants a monetary Order in the sum of \$2,295.00. In the event that the landlord does not 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 *Residential Tenancy Act*.

Dated: December 14, 2010.

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Dispute Resolution Officer