



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes MNDC, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlord seeking a monetary claim against the tenants due to the tenants' breach of the tenancy agreement. The landlord appeared, gave affirmed oral testimony and provided documentary evidence in advance of the hearing. The tenants did not appear.

The landlord provided affirmed oral testimony that he served each tenant with notice of this application and hearing by registered mail to their places of employment. Tracking information from Canada Post confirms that one of the tenants personally signed for the registered package. The other registered package was delivered but it cannot be confirmed that the tenant it was addressed to actually received the package.

Pursuant to section 71(2)(c) of the *Act* I find that one of the two tenants was sufficiently served with notice of this application and hearing because the landlord was able to obtain the tenant's address of employment and the Canada Post tracking information confirms that the tenant personally signed for the registered package.

Therefore, I find that the tenant was served with notice of this proceeding and I proceeded with the hearing in the tenant's absence. I have amended the landlord's application to identify only one tenant as the respondent, as the landlord has only provided evidence that one of the two tenants was served with notice of this proceeding.

### Issue(s) to be Decided

Did the tenant breach the tenancy agreement and *Act* entitling the landlord to monetary relief?

### Background and Evidence

This tenancy began on November 1, 2009 for the monthly rent of \$750.00 and a \$375.00 security deposit paid by the tenant on October 5, 2009. The landlord testified that the tenancy agreement did not allow for pets and this was reflected by the pet

deposit portion of the tenancy agreement being crossed out and marked as not applicable.

The tenancy was for a fixed term ending effective October 31, 2010. The landlord did not complete written move in and move out condition inspection reports as required by the *Act*.

The landlord testified that on November 6, 2009 he was notified by the strata council that a dog was observed in the rental unit. The landlord contacted the tenant who denied the allegation and the landlord supported the tenant against the strata council.

The landlord testified that on February 11, 2010 the strata council again cited the tenant as having a pet in the rental unit and fined the landlord \$50.00 for being in breach of a strata bylaw. This time the tenant acknowledged having a dog in the rental unit and made promises to resolve the issue and paid the \$50.00 fine on the landlord's behalf.

Then again on April 7, 2010 the landlord was informed that the tenant still has a pet at the rental unit and he was fined a second time. On May 10, 2010 the tenant provided the landlord with notice to vacate the rental unit. In the e-mail the tenants wrote, "We understand that we will not receive our Damage Deposit due to breaking our Lease and this is fine with us" [reproduced as written].

The landlord submitted that the rental unit was immediately advertized but an occupants were not found until September 1, 2010 resulting in a loss of rental income of \$2,250.00. The landlord also stated that the carpets in the rental unit required cleaning, especially since the tenants had an unauthorized dog in the rental unit for the amount of \$275.00. The landlord also paid \$50.00 for advertizing and a \$75.00 fee to have the hydro transferred to his name since the tenants failed to disconnect their connection and an additional strata fine of \$50.00.

From this loss of \$2,700.00 the landlord seeks to retain the tenants' security deposit in partial satisfaction of this claim.

### Analysis

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

In a claim for damage or loss under the *Act* or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I grant the landlord's application in part and only deny the landlord's claim to recover the \$50.00 for advertizing since no receipt was provided.

I accept all other aspects of the landlord's claim being satisfied that the loss and damage resulted from the tenants' breaches of the tenancy agreement. The tenants breached the tenancy agreement by bringing in a pet which they knew was not permitted and then appear to have repeatedly lied about that fact and attempted to hide it from the landlord. As a result the landlord was fined twice by the strata council due to a breach of the strata bylaws. Because the tenants had a pet in the rental unit I also accept the landlord's claim for carpet cleaning.

The tenants then breached the tenancy agreement by failing to give proper notice under the *Act* and for breaking the fixed term lease. I accept the landlord's evidence that the rental unit was advertized and I accept that despite the landlord's attempts to find new occupants the unit was vacant for three months in the amount of \$2,250.00.

Finally, I grant the landlord's claim for hydro as I am satisfied that the landlord would not have incurred this cost if the tenants had honoured the tenancy agreement. Specifically, the landlord would not have incurred the connection fee of \$27.00 and the bimonthly residential rate of \$25.72. I also accept the energy used for \$22.72 as I am satisfied that this is a limited amount of energy used to maintain the rental unit while the unit was vacant. I grant the landlord's request for \$75.00.

I accept that the landlord has established a total monetary claim in the amount of \$2,650.00. From this sum I authorize that the landlord may retain the tenants' security deposit of \$375.00 in partial satisfaction of this claim leaving an outstanding balance of **\$2,275.00** owed the landlord.

### Conclusion

I grant the landlord's application.

I grant the landlord a monetary Order due to breach of the tenancy agreement by the tenant for the sum of **\$2,275.00**. This Order must be served on the tenant. This Order may be 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: January 20, 2011.

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Residential Tenancy Branch