



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MNDC, MND; FF

### **Introduction**

This is the Landlord's application for a Monetary Order for unpaid rent and damages to the rental unit; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenants received the Notice of Hearing documents and copies of the Landlords' documentary evidence by registered mail, sent January 20, 2011. It was also established that the Landlord received copies of the Tenants' documentary evidence by registered mail, sent March 11, 2011.

### **Issues to be Decided**

- Are the Landlords entitled unpaid rent for the month of July, 2010?
- Are the Landlords entitled to a monetary award for damage caused by the Tenants to the carpets at the rental unit?

### **Background and Evidence**

This tenancy began in December, 2008. There were 5 fixed term tenancy agreements that were entered into during this tenancy, as follows:

Term of tenancy	Monthly Rent
May 1, 2009 – October 31, 2009	\$1,600.00
November 1, 2009 – April 30, 2010	\$1,600.00
May 1, 2010 – June 30, 2010	\$1,200.00
July 1, 2010 – July 31, 2010	\$2,000.00

On May 31, 2010, the Landlords sold the rental unit, effective August 1, 2010. The last tenancy agreement was signed by the parties on May 31, 2010. On the same day, the parties signed a mutual agreement to end the tenancy effective July 31, 2010 at 12:05 p.m.

The Tenants moved out of the rental unit on June 30, 2010, and did not pay rent for the month of July, 2010. The Landlords seek a monetary award against the Tenants for that unpaid rent.

The Tenants testified that they were negotiating a tenancy agreement with a new landlord, and had asked the Landlord if they could delay signing the lease for a day or two, when they expected to know for certain if the new tenancy could start on July 1, 2010. The Tenants submitted that they signed the last lease on May 31, 2010 because the Landlord insisted that they sign it or move out at the end of June. The Tenants stated that they signed the agreement under duress. They stated that they found out the following day that they could move into their new home on July 1, 2010.

The Landlords testified that the Tenants' cat had soiled the carpets in the rental unit and that they could not get the smell out. They stated that they had a professional carpet cleaner clean the carpets and rented an ozonator. The Landlords stated that the odor remained in the carpets. The Landlords seek to recover the cost of renting the ozonator and the cost of the carpet cleaning from the Tenants (\$337.42). They also seek compensation in the amount of 56% of the estimated cost of replacing the carpets ( $\$3,433.36 \times 56\% = \$1,922.68$ ).

The Tenants denied that the carpets were ruined by their cat. They stated that there was no Condition Inspection Report prepared at the beginning or the end of the tenancy, and that the carpets had pet smells when they moved into the rental unit. The Tenants stated that the carpets were very old. The Tenants testified that they had the carpets professionally cleaned at the end of the tenancy.

On December 22, 2010, the Tenants were successful in an application for double the security deposit, pursuant to the provisions of Section 38(6) of the Act.

## **Analysis**

### **Regarding unpaid rent for the month of July, 2010**

The tenancy agreements signed by both parties were all fixed term agreements, set to expire at the end of the term. The agreement signed on April 16, 2010, included the following provision:

This tenancy is for a fixed length of time (2 months) ending on 30 June 2010. At the end of this fixed length of time the tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right.

Both parties placed their initials in the boxes.

The Tenants submitted that they were shocked when the Landlord advised them that they were expected to move out of the rental unit on June 30, 2010, unless they signed a new tenancy agreement, yet the tenancy agreement was clear that this was the case. The Tenants signed a new agreement, for a term of one month, but did not pay rent for that month. The Landlords have established their claim for rent in the amount of \$2,000.00 for the month of July, as provided for in the tenancy agreement.

### **Regarding the Landlords' claim for compensation with respect to the carpets**

Based on the documentary evidence and testimony of both parties, I find that the Landlords have not established their monetary claim for the cost of carpet cleaning, rental of the ozone machine, or replacement of the carpets. This portion of their application is dismissed.

This is the Landlords' application and therefore the Landlords have the burden to prove their claim on balance of probabilities. In order to be successful, the Landlords have to prove all of the following four essential elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

There was no Condition Inspection Report done at the beginning or the end of the tenancy. The Tenants disputed that they were responsible for any damage to the carpets. There is insufficient evidence to satisfy the second element of the test. Even if the Landlords had proven that the Tenants had damaged the carpets, the Landlords have not satisfied the first element of the test for damages as they have not suffered a loss. The Landlords testified that the purchasers of the rental unit did not require the Landlords to replace the carpets. The Landlords testified that they were not required to compensate the new owners for damaged carpet.

The Tenants testified that the carpets were old and had pet smells when they moved into the rental unit, because the previous tenants had a dog. The Tenants testified that they shampooed the carpets at the end of the tenancy. There is insufficient evidence that the Tenants damaged the carpets because there is insufficient evidence of the state of the carpets at the beginning or the end of the tenancy.

The Landlords have been partially successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Tenants.

## **Conclusion**

I hereby provide the Landlords a Monetary Order in the amount of \$2,050.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 01, 2011.

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Residential Tenancy Branch