



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: OPR, OPB, MNR, MNSD, MNDC, FF  
Tenants: CNR, OLC

### **Introduction**

This hearing was convened by way of conference call to deal with applications filed by the landlords and by the tenants. The landlords have applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for breach of an agreement with the landlord; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Both landlords attended the conference call hearing, however only the female tenant testified. The male tenant also attended. The parties gave affirmed testimony, provided evidence in advance of the hearing, and were given the opportunity to cross examine each other on their evidence. All evidence and the testimony provided have been reviewed and are considered in this Decision.

During the course of the hearing, the landlords withdrew their applications for an Order of Possession for unpaid rent or utilities and for an Order of Possession for breach of an agreement with the landlord because the tenants have vacated the rental unit. As a result, the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed.

### **Issue(s) to be Decided**

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to an order permitting the landlords to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

The landlord testified that this month-to-month tenancy began on April 1, 2011 and ended on May 31, 2011. Rent in the amount of \$850.00 per month was payable in advance on the 1<sup>st</sup> day of each month, although there is no written tenancy agreement. The landlord collected a security deposit from the tenants in the amount of \$425.00 which was paid in 3 instalments during the month of April, 2011.

No move-in condition inspection report was completed at the outset of the tenancy, and no move-out condition inspection report was completed at the end of the tenancy.

The landlord further testified that the tenants are in arrears of rent the sum of \$300.00 for the month of May, 2011. The landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing, which contains an expected date of vacancy of May 22, 2011. The landlords claim \$300.00 for rental arrears for the month of May, 2011 as well as loss of revenue for the month of June, 2011 in the amount of \$850.00.

The tenant testified that on April 1, 2011 he gave the landlord \$850.00 for the rent, \$425.00 for the security deposit and another \$200.00 toward a \$250.00 pet damage deposit and promised the landlord he would pay another \$80.00 which included a \$30.00 late fee. The tenants paid a total of \$675.00 to the landlord for deposits. The landlord did not dispute that evidence.

He further testified that about a week after moving into the rental unit they wanted to move out. The landlords gave the tenants a document entitled "House Rules/Guidelines for Rental" two days after the tenants moved in. He stated that the tenants did not receive them prior to renting the unit, and did not agree to them prior to the tenancy. A copy of that document was provided in advance of the hearing.

The tenant further testified that the landlord has entered the rental unit when the tenants were not at home. He further stated that the internet was turned off to the unit during the first month of the tenancy, which was included in the rental agreement.

He further acknowledged owing the landlord \$300.00 for rent for the month of May, 2011 but has not paid it because the female landlord told the tenants that she was not going to return the security deposit or the pet damage deposit.

## **Analysis**

Firstly, with respect to the tenants' application, the tenants have moved from the rental unit, and the landlords have withdrawn the applications for an Order of Possession. Since the tenants are no longer residing in the rental unit, the tenants' application for an order cancelling the notice to end tenancy and the tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement are no longer applicable to the tenancy, and therefore, they must be dismissed.

With respect to the landlords' application for a monetary order for unpaid rent or utilities, I find that the tenants owe the landlords \$300.00 for the month of May, 2011. There is no dispute by the tenants with respect to that amount.

With respect to the landlords' application for loss of revenue for the month of June, 2011, I refer to Residential Tenancy Policy Guideline #3 which states that the failure of a tenant to pay rent is a fundamental breach of a tenancy agreement, and:

“The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.”

And further,

“In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.”

Therefore, I find that the landlords' application for loss of revenue is justified.

With respect to the deposits, the landlord did not dispute the testimony of the tenant about the amount paid for the pet damage deposit, and therefore, I find that the tenants have paid \$425.00 for the security deposit and \$250.00 for a pet damage deposit. Further, the *Act* states that a landlord may only claim a pet damage deposit for damage caused by a pet, and I have heard no evidence of pet damage. However, the *Act* permits me to order that payment due from a tenant to a landlord may be deducted from any security deposit or pet damage deposit due to the tenant. Having found that the tenants are liable for unpaid rent and loss of revenue, I find it just in the circumstances to set off the amounts due to the parties.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### **Conclusion**

For the reasons set out above, the landlords' application for an Order of Possession for unpaid rent or utilities is hereby dismissed without leave to reapply, as withdrawn by the landlords.

Similarly, the landlords' application for an Order of Possession for breach of an agreement with the landlords is also dismissed without leave to reapply, as withdrawn by the landlords.

I hereby order the landlords to retain the security deposit in the amount of \$425.00 and the pet damage deposit in the amount of \$250.00, and I grant the landlords a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$525.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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: June 09, 2011.

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Residential Tenancy Branch