



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the Tenants for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 15, 2011. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

### Issues(s) to be Decided

1. Is there a loss or damage to the Tenants and if so how much?
2. Is the Tenant entitled to compensation for a loss or damage and if so how much?

### Background and Evidence

This tenancy started on October 1, 2010 as a fixed term tenancy with an expiry date of June 30, 2011. Rent was \$2,150.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$1,075.00 and a pet deposit of \$1,075.00 on September 29, 2010. The Tenants said they moved out of the rental unit on June 28, 2011 at the end of the tenancy agreement. The Tenants said there was a move in and move out condition inspection report completed by the Landlord and the Tenants. The condition inspection reports were submitted into evidence.

The Tenants said they moved into the rental unit October 1, 2010 and on Oct 30, 2010 the ladder to the loft broke. The Tenants said they informed the Landlord on October 31, 2010 and the Landlord acknowledged the problem by email on November 1, 2010. The Landlord said they repaired the stairs within one week of being notified of the problem. The Tenants continued to say they did not feel the stairs were safe and as a result they were unable to use the loft space during the tenancy. Consequently the Tenants said they are making a claim against the Landlord for monetary compensation for loss of use of the loft area for \$2,580.00, which represents 15% of the rental unit space from October 31, 2010 to June 28, 2011. As well the Tenants are claiming \$1,720.00 for the loss of use of one bedroom which they used as for an office and

storage as replacement for the loft space and \$1,600.00 for moving costs when they moved out of the rental unit. The Tenants said they moved out because the Landlord did not fix the ladder to the loft to their satisfaction and they felt it was unsafe.

The Landlord said they fixed the ladder to the loft in the first week of November, 2010 and the ladder was used by a number of trades persons and by the owner of the property at the end of November, 2010, when he was checking the hot water heater. Both the Property manager and the Owner said they believed the ladder to the loft was safe and usable.

The Tenants said they had a number of conversations with a representative of the Landlord about the ladder, but she was not able to be on the conference call. The Tenant said if she was on the conference call it would be apparent that they had told the Landlord they felt the ladder was unsafe and unusable on a number of occasions. The Property Manager and the Owner both said they were unaware of the Tenants requests to have the ladder replaced.

The Landlord presented a witness C.P. to testify about the ladder. The Witness C.P. said he had gone up the ladder while showing the unit to prospective new tenants and he thought the ladder was useable. The Tenant asked the Witness if the unit was rented with or without the loft. The Witness said they were telling the prospective tenants that the unit was being rented without the loft until the ladder issue was resolved. The Property manager said the unit was rent with the loft. The owner said the ladder was replaced as a general upgrade and did not reflect any problems with the existing ladder.

### Analysis

Condition Inspection Reports are done to establish a clear indication of the condition of the rental unit on move in and on move out. The reports are signed to ensure that both the Landlord and the Tenant agree on the condition of the unit. In this situation a move in condition inspection report was completed on October 1, 2010 and it indicates the stairs to the loft are damaged. As well the move out condition inspection report dated June 28, 2011 says the stairs are unsafe. The evidence on the condition inspection report shows that the Landlord and the Tenant both agree there is damage to the stairs or ladder going to the loft. Although both the Property Manager and the Owner said the stairs were repaired and safe to use the condition report says the stairs were unsafe, consequently I accept the Tenants' testimony and the condition inspection reports and I find for the Tenant that the loft space was unusable because the ladder to the loft was unsafe. I award the Tenants \$2,580.00 in damages for loss of use of the loft space in the rental unit from October 31, to June 28, 2011.

With respect to the Tenants' claim for \$1,720.00 for the loss of use of one bedroom to make up for the loss of loft space, I find there may have been an inconvenience, but the Tenants did have the use of the space, therefore I do not consider it a loss of use of the room. I dismiss without leave to reapply the Tenants' claim of \$1,720.00 for loss of use of the bedroom.

This tenancy was a fixed term tenancy with an expiry date of June 30, 2011. The Landlord and the Tenant decided not to renew the tenancy, therefore the Tenants move out of the rental unit on their own accord. Moving costs are a normal part of life when changing residents; I find the Tenants moved out by their own decision, consequently their request to have their moving costs paid by the Landlord are dismissed without leave to reapply.

As the Tenants have been partially successful in this matter, they are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing as following:

Loss of the Loft Space:	\$ 2,580.00
Recover filing fee	<u>\$ 50.00</u>
Subtotal:	<u>\$2,630.00</u>

### Conclusion

A Monetary Order in the amount of \$2,630.00 has been issued to the Tenants. A copy of the Orders must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch