



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued to them for alleged cause and to recover their filing fee.

The hearing process was explained to the parties and the parties were given an opportunity to ask questions.

All parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to respond each to the other, and make submissions to me.

On a preliminary note, the landlords submitted evidence which was received two days prior to the hearing, which included an additional 1 Month Notice to End Tenancy for another reason. I note that the move out date on that Notice is ineffective under the Residential Tenancy Act (the "Act"); however, I have not considered this Notice for purposes of this Decision as it was not properly submitted within the allowable time frame required under the Residential Tenancy Branch Rules of Procedure.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Are the tenants entitled to recover the filing fee?

### Background and Evidence

The tenancy began on October 1, 2010, for a one year, fixed term. The tenancy agreement provided that at the end of the fixed term, the tenancy may continue thereafter on a month to month basis or another fixed term. Monthly rent is \$1,000.00, payable on the 1<sup>st</sup> day of the month.

The tenant testified that the parties agreed to a security deposit of \$500.00, \$250.00 of which was paid in cash and the remaining \$250.00 was to be paid by the tenants performing work at the rental unit and residential property.

The landlords denied making this agreement with the tenants, but did acknowledge receipt of \$250.00.

Pursuant to the rules of procedure for the *Residential Tenancy Act* (the "Act"), the landlords proceeded first in the hearing and testified as to why the tenants had been served a 1 Month Notice to End Tenancy.

The landlords issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the tenants on September 30, 2011, with a stated effective vacancy date of October 31, 2011.

The cause as stated on the Notice alleged that the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

I note that the tenancy agreement provided that the tenants were required to pay a security deposit of \$500.00 by September 1, 2010.

The landlord stated that the tenants were sent a letter on July 14, 2011, informing the tenants they, the landlords, decided not to renew the lease.

When the tenants responded by informing the landlords they intended to continue the tenancy on a month to month basis, at the end of the fixed term, September 30, 2011, the landlords stated they decided to issue a Notice to End Tenancy based upon the tenants not paying a full security deposit.

The landlords stated that any agreement for work was to pay for a bed, and not a security deposit. Upon query, the landlords stated that they tried to collect the security deposit on several occasions, but gave up after it became uncomfortable to them.

Upon query, the landlords contended that the tenancy agreement was marked incorrectly and that the box requiring the tenants to move out at the end of the fixed term should have been marked, instead of the box allowing the tenancy to continue on a month to month basis.

In response, the tenant stated the Notice alleging non-payment of a security deposit came as a complete shock, as the tenants performed work for the landlords in

exchange for the balance of the security deposit. The tenants denied that the landlords tried to contact them for payment of any further security deposit.

### Analysis

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find that the Notice to End Tenancy should be cancelled.

I allow the tenants' Application for Dispute Resolution, and **I order that the Notice to End Tenancy issued September 30, 2011, dated September 30, 2011, is cancelled and is of no force or effect.**

The Residential Tenancy Act (the "Act") provides that a landlord may issue a Notice to End Tenancy if a tenant has not paid a security deposit within 30 days of the date it is required to be paid in the tenancy agreement, which in this case was September 1, 2010.

Therefore, the latest date the landlords were entitled to issue a Notice under this provision was October 1, 2010 and therefore, I find the Notice invalid.

I accept the tenants' testimony that the parties had reached an agreement that \$250.00 of the security deposit would be satisfied through a work arrangement with the landlords.

I therefore find upon a balance of probabilities that the landlords' primary purpose in issuing the Notice was to correct their mistake on the tenancy agreement, that of marking the wrong box.

As I have found the Notice to be invalid, **I order that the tenancy continue until such time it may legally end under the Act.**

As the tenants were successful in their application seeking to cancel the Notice, I award them recovery of their filing fee of \$50.00.

I grant the tenants a **monetary order** in the amount of **\$50.00**.

I am enclosing a monetary order for \$50.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlords fail to comply with this monetary order.

Conclusion

The landlords' 1 Month Notice to end Tenancy for Cause dated and issued September 30, 2011, is not valid and not supported by the evidence and the tenants are granted an order **dismissing** the Notice to End Tenancy.

The tenants are granted a monetary order for \$50.00.

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: November 04, 2011.

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Residential Tenancy Branch