



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application filed September 1, amended September 8 and September 13, 2011: MT; CNC; CNR; MNDC; FF; O

Landlords' application filed September 7, 2011: OPC; OPB; MNR; MNSD; FF

Landlords' application filed September 13, 2011: OPR; MNR; MNSD; FF

### **Introduction**

This Hearing was convened to consider cross-applications. The Tenants seek more time to apply to cancel Notices to end the tenancy; to cancel a One Month Notice to End Tenancy for Cause and a Ten Day Notice to End Tenancy for Unpaid Rent; for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations, or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The Landlords have made two applications. One Application seeks an Order of Possession for cause; an Order of Possession for breach on an agreement; a Monetary Order for Unpaid Rent; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants. The other Application seeks an Order of Possession for unpaid rent; a Monetary Order for Unpaid Rent; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

At the Hearing on September 29, 2011, the Tenants withdrew their applications: for more time to apply to cancel Notices to end the tenancy; to cancel a One Month Notice to End Tenancy for Cause; and to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and the Landlords withdrew their applications for Orders of Possession. The Tenants moved out of the rental unit on September 30, 2011, at 9:30 p.m.

The Landlords' Application for Dispute Resolution filed on September 13, 2011, amended their original Application to include a claim for loss of revenue for the month of October, 2011. Therefore, I amended the Landlords' Application filed September 7, 2011, to include a claim for loss of revenue for October, 2011, and dismissed the Landlords' September 13th Application.

At the Hearing on September 29, 2011, I ordered the Landlords to serve each of the Tenants with copies of their documentary evidence that was provided to the Residential Tenancy Branch on September 7, 13 and 22, 2011. The Landlords were directed to mail the documents, by registered mail, within 3 days of receipt of my Interim Decision and to provide the Residential Tenancy Branch with receipts and tracking numbers for the mailed documents. The Landlords did not provide **each** of the Tenants with copies of their documentary evidence and did not send the documents by registered mail. The female testified that she received a parcel from the Landlord which included two sets of documents, clipped together, each of which contained some of the same documents, but which were dissimilar. The female Tenant testified that not all of the documents were present in both packages and that they were disorganized. The Landlord testified that she was not able to send them by registered mail because together they weighed more than .5 kilograms. She sent both Tenants copies in the same package and had no explanation for why she did not split them up and send them in accordance with my Order. Therefore I did not consider the Landlords' documentary evidence and invited them to provide me with oral testimony with respect to its contents.

Both parties appeared and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me.

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

- Are the Tenants entitled to compensation pursuant to the provisions of Section 67 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent and loss of income for the months of September and October, 2011?
- Are the Landlords entitled to keep the security deposit in satisfaction of their claim for damages to the rental unit?

### **Background and Evidence**

This tenancy began on September 1, 2010. Monthly rent was \$900.00, due on the first day of each month. The tenancy agreement was a two year lease. The Landlords required a security deposit in the amount of \$350.00. The Tenants paid a security deposit of \$263.18 on August 30, 2011. The remainder of the security deposit was not paid. The Landlords are still holding the security deposit.

The female Tenants' daughter and the Landlords' son are engaged to be married.

The female Landlord and her advocate gave the following testimony:

The Landlords' advocate testified that the Tenants did not pay rent for the month of September, 2011. The Landlords seek a monetary award in the amount of \$900.00 for unpaid rent.

The Landlords' advocate testified that the tenancy ended by mutual agreement on September 30, 2011, but the Tenants did not move out until 9:30 p.m. He stated that the Tenants broke the dishwasher, left big holes in the walls, broke the toilet seats and did not clean the rental unit at the end of the tenancy. The Landlords seek to retain the security deposit in compensation for damages done by the Tenants.

The Landlords' advocate stated that no Condition Inspection Report was completed at the end of the tenancy because the Tenants were not available. The police were called and they told the Tenants to leave.

The Landlord testified that the rental unit was not re-rented for the month of October, 2011, because the damages have not yet been repaired. The Landlords seek loss of revenue in the amount of \$900.00 for the month of October. The rental unit remains vacant as at November 2, 2011. The Landlord stated that it would take about a day to fill in the holes, replace the toilet seats and install a new dishwasher.

The female Tenant gave the following testimony:

The Tenant agreed that no rent was paid for September, 2011.

The Tenant stated that she had movers who were supposed to come at 9:00 a.m. on September 30, 2011, but that the movers arrived late. The Tenant testified that she had finished moving at 4:30 p.m., and told the Landlords that they would return to clean, do the move-out inspection, and return the keys once they had unloaded their possessions at their new home. The Tenant testified that when she returned, the Landlords had changed the locks to the rental unit. She stated that the female Landlord hit her in the face, so she called 911. The Tenant stated that the police told her to go somewhere she felt safe so she went to the lobby. The Tenant testified that the female Landlord followed her into the lobby and started taunting the female Tenant about her health issues. She stated that the building manager persuaded the Landlord to return to the rental unit.

The Tenant testified that the dishwasher was not working properly from the beginning of the tenancy and that she notified the Landlords' son in November 2010, who did not fix it. She stated that the Landlords' son said he could not afford to fix it. The Tenant testified that her daughter and the Landlords' son were agents of the Landlords and that

they had an understanding that her daughter and the Landlords' son would move into the rental unit at the end of the lease. The Tenant stated that the Landlords' son and her daughter collected the rent for the Landlords and provided the Tenants with receipts for rent paid. She stated that they also made repairs to the washing machine and fixed a fence during the tenancy. She testified that the hydro bill was in the Landlords' son's name.

The Tenant testified that the holes in the walls were small holes made by picture hangers and that she was not given the opportunity to repair them, or to clean the rental unit.

The Tenant testified that she gave the keys and the fob to the building manager at about 10:30 p.m. after the police left.

The Tenant testified that the Landlords caused the Tenants embarrassment and stress which exacerbated her medical condition. She stated that her son was disabled and was harassed by other tenants at the rental property because he was troubled. She testified that the Landlords' son and her son did not get along. The Tenant seeks compensation in the amount of \$10,000.00 for harassment and stress.

The Tenants seek compensation in the amount of \$2,000.00 (\$200.00 a month for 10 months) because she was without a working dishwasher.

The Tenants also seek compensation in the amount of \$900.00 to set off the unpaid rent for the month of September, 2011.

The female Landlord gave the following reply:

The Landlord testified that there were no cleaning supplies left at the rental unit and she does not believe the Tenant intended on cleaning.

The Landlord testified that she changed the locks to the rental unit at 10:30 p.m., September 30, 2011, after the rental unit was empty.

The Landlord stated that her son and the Tenant's daughter were not the Landlords' agents, but that they did write receipts and pick up cheques for the Landlords. The Landlord testified that whenever problems were identified to the Landlords they were fixed immediately. She denied that the dishwasher was not working properly at the beginning of the tenancy.

The Landlord stated that the Tenants were making their claims to get back at the Landlord for issuing a Notice to End Tenancy for Cause, and that their claims were unfounded.

### **Analysis**

In a claim for damage or loss under the Act, regulation or tenancy agreement, the persons making the claim has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the respondent pay for the loss requires the applicant to satisfy four different 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 respondent in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

It was clear from the testimony of both parties that this was a troubled tenancy. However, the Tenants did not provide sufficient evidence to support their claims for \$10,000.00 and \$900.00 for harassment by the Landlords and other tenants in the rental property. No written or verbal witness statements (for example, by the manager of the rental property) were in evidence and no other documentary evidence (for example, written notice to the Landlords to provide the Tenants with peaceful enjoyment of the rental unit) was provided to support this claim. This portion of the Tenants' application is dismissed.

I dismiss the Tenants' claim to set off unpaid rent in the amount of \$900.00, as it is not a remedy that is contemplated by the Act.

I have considered the testimony of the parties in an effort to establish credibility in relation to the dishwasher. The test of the truth of the story must align with the balance of probabilities and in the circumstances before me, I find the Tenants' version of events to be highly probable. The Landlord denied that her son and the Tenant's daughter were her agents, however she agreed that they accepted rent money and issued receipts on the Landlords' behalf and did not dispute that her son had fixed the washing machine and the fence. I find that the Landlords' son and the Tenant's daughter were agents for the Landlord and that the Tenant was without use of a working dishwasher

for 10 months of the tenancy, contrary to the provisions of Section 32 of the Act. Pursuant to the provisions of Section 65(1)(f) of the Act, I find that the Tenants are entitled to **\$500.00** (\$50.00 per month for 10 months) in compensation for the reduction in the value of the tenancy for loss of a working dishwasher.

The Tenants did not pay rent for the month of September, and I find that the Landlords are entitled to a monetary award for unpaid rent in the amount of **\$900.00**.

I find that the Landlords did not prove that they took reasonable steps to mitigate or minimize their loss, pursuant to step four in the test for damages, with respect to their claim for loss of revenue for the month of October, 2011. The Landlord stated it would take about one day to make repairs to the rental unit. As of the date of the Hearing, the Landlords had still not made any repairs and the rental unit remains vacant as at November 2, 2011. Therefore this portion of their claim is dismissed.

The Landlords did not provide sufficient evidence to support their claim in the amount of \$263.18 for damages to the rental unit. No receipts, photographs, or other documentary evidence was provided. This portion of their application is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award. No interest has accrued on the security deposit.

The Landlords have established a monetary award as follows:

Unpaid rent for September, 2011	\$900.00
Less security deposit	- \$263.18
<b>TOTAL AMOUNT AFTER SET-OFF</b>	<b>\$636.82</b>

I order that both parties bear the cost of their application fees.

I hereby set off the Tenants' monetary award against the Landlords' monetary award and provide the Landlords with a Monetary Order for the difference in the amount of **\$136.82**.

### **Conclusion**

I hereby provide the Landlords a Monetary Order in the amount of **\$136.82** for service upon the Tenants. This Order 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: November 7, 2011.

---

Residential Tenancy Branch