



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF  
                                 MNSD, O, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenants. The application by the landlord is for a monetary order for damages, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The application by the tenants is for return of the security deposit, other and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This fixed term tenancy began July 10, 2011 with monthly rent of \$1350.00 and the tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00. The landlord has returned the \$675.00 pet damage deposit to the tenants.

The landlord testified that the tenants gave the landlord notice by email on October 6, 2011 that they would be vacating the rental unit November 15, 2011. The landlord stated that after consulting this office they contacted the tenants to advise them of their responsibilities and received no reply until October 19, 2011 when the tenants stated they would be vacating by November 1, 2011.

The landlord's stated that after this last communication from the tenants they immediately placed ads on Craigslist and Kijiji to re-rent the unit. The landlord stated that they were unable to secure new tenants for November 2011 and suffered a loss of \$1350.00 rental income for that month.

The tenants testified that they gave the landlord notice to vacate due to health reasons. The tenants stated that the rental unit did not have a southern exposure as advertised, was not as sunny as advertised and the lack of sunlight would severely compromise the

mental and physical health of one of the tenants. The tenants also stated that the new laminate flooring that was installed prior to this tenancy loudly creaked, cracked and was buckling and that this was continually disturbing their peace and quiet enjoyment of the rental unit. The tenants stated that because of these issues they had no other option but to provide notice to the landlord and vacate.

The landlord stated that the rental unit was advertised as being sunny and bright, which it is. The landlord stated that the tenants were very aware of the amount of light in the rental unit as they came to view it multiple times prior to accepting the tenancy. The tenant's countered this by stating that they felt 'forced' by the landlord to move in as they had been told if they did not want to take the rental unit for July the landlord would find other tenants.

The landlord stated that when the tenants complained about the creaking and buckling of the laminate flooring the landlord brought in a professional to check the flooring and a repair was made in the living room. The landlord stated that they then verified with the manufacturer that nothing was wrong with the flooring or the installation. The tenants claimed that a second flooring repair man that came to the rental unit stated that the floors creaked and cracked because it was inexpensive flooring. The landlord has submitted a statement from the new tenants that clearly states there are no problems with the flooring and that it does not make any cracking or creaking noises when walked on. The landlord stated that the CD they entered into evidence clearly shows the laminate flooring not buckling or creaking and shows how bright the rental unit is.

The tenants stated that they had not had the opportunity to review the CD that the landlord refers to as they just received the landlord's evidence. The landlord stated that as this was her first hearing she had not been aware of the requirements for providing evidence to the other party and had delivered the evidence to the tenants just 2 days ago.

The landlord stated that the tenants also damaged a \$200.00 wardrobe that the landlord had in the rental unit when the tenants dragged it outside and left it in the yard. The landlord stated that in order to have an area for their barbeque and 2 chairs the tenants dug up 2 outdoor plants, let them die and did not replace them and utilities for the rental unit remain unpaid by the tenants.

The tenants acknowledged that they had moved the landlord's wardrobe out to the yard but maintained that it was already damaged prior to it being moved. The tenants stated that they did not pull up any plants and commented that the back yard was completely overgrown.

The tenants stated that they had no issue paying the utilities for the time of their tenancy and they had not received copies of the utility bills until today when they opened the landlord's evidence package.

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord is entitled to a monetary order for damages and loss.

The tenants did not give proper notice to the landlord per the *Act* and although the landlord advertised the rental unit as soon as the tenants confirmed that they were vacating, the landlord was unable to secure new tenants for November 2011. This resulted in a loss of \$1350.00 in rental income for the month of November 2011 to the landlord therefore I find that the landlord is entitled to a monetary award of \$1350.00.

The tenants acknowledge that the utility bills remained unpaid at the end of the tenancy. Pro-rating the utility bills results in a total amount of \$132.04 due to the landlord for unpaid utilities and the landlord is entitled to a monetary award for this amount.

In regards to the damaged wardrobe and 2 dead plants and in the absence of receipts, I find that the landlord is entitled to the limited amount of \$140.00 for these items.

Accordingly I find that the landlord is entitled to a monetary order for \$1622.04.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenants are not entitled to return of the security deposit. The tenant's did not provide the landlord with proper notice as outlined in the *Act* and the landlord suffered a loss of rental income therefore the security deposit will be used to offset the landlord's award as outlined above.

The tenant's application is dismissed without leave to reapply.

As the tenants have not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I find that the landlord has established a monetary claim for \$1622.04 in damages and loss. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's \$675.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$997.04**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 17, 2012

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Residential Tenancy Branch