



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MND, MNR, MNSD, MNDC and FF  
Tenants: MNDC, MNSD, FF and O

This hearing was convened on applications by both the landlord and the tenants arising from the tenants having left a fixed term tenancy early.

By application of December 14, 2011, the landlord seeks a monetary award for unpaid rent/loss of rent, damage to the rental, recovery of the filing fee for this proceeding and authorization to retain the security and pet damage deposits in set off against the balance owed.

By application of January 24, 2012, the tenants seek a monetary award for damage or loss under the legislation or rental agreement, return of their security and pet damage deposits in double, aggravated damages and recovery of their filing fee for this proceeding.

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

This matter now requires a decision on whether both parties are entitled to monetary awards for the claims submitted and the disposition of the security and pet damage deposits.

### **Background, Evidence and Analysis**

This tenancy began on July 1, 2010 under a one year fixed term rental agreement which was renewed on May 25, 2011 set to end on June 30, 2012. The landlord holds security and pet damage deposits of \$825 each paid at the beginning of the tenancy. On renewal, the rent rose from \$1,650 per month to \$1,700 per month.

During the hearing, the parties gave evidence that the tenants had advised the landlord on September 18, 2011 that a change in their circumstances had created a need for them to leave the fixed term tenancy early, on November 30, 2011. The email expressed the tenants' desire to provide the landlord sufficient time to find suitable new tenants and offered to assume responsibility for assisting.

The ensuing dialogue involved a debate between the parties as to whether new tenants should be engaged under an assignment of the rental agreement or a sub-lease, the tenants insisting on the former and the landlord intransigently favouring the latter.

That debate became the subject of a hearing on November 17, 2011. In the decision issued on November 23, 2011, the Dispute Resolution Officer (DRO) cited the landlord's obligation under section 34 of the *Act*, and reiterated at clause 16 of the rental agreement, to consider proposals of both assignments and sublets. The DRO emphasized that, in either case, the landlord could not unreasonably withhold consent.

At the present hearing, the landlord stated that until he read that decision, he had insisted on a sub-let because he believed an assignment relieved the tenant's of all responsibility under the fixed term agreement. The tenants stated that they had insisted on an assignment as they were moving from Vancouver to Vancouver Island and did not feel they could properly supervise a sublet from that distance.

In any event, the unfortunate delay in resolving the question resulted in the landlord not finalizing a new tenancy starting until January 2012.

In the present application, the landlord seeks and I find as follows:

### **LANDLORD'S CLAIMS**

**Loss of rent for December 2011 - \$1,700.** The landlord stated that, because the tenants had breached the fixed term agreement, they are responsible for his loss of rent for December 2011. The tenants submit that, because the landlord frustrated their efforts to exercise their full right to pursue an assignment of the agreement that he repudiated the agreement and is not entitled to recover the loss. The tenants noted that they had put one tenant forward but that landlord had rejected her categorically because they had proposed an assignment and because she had a dog, a condition that had not been previously imposed.

The landlord stated he had rejected the particular tenant because she had paid only \$900 in her previous tenancy and was dependent on a co-tenant to join her in January who he had not had the opportunity to vet.

The tenants also pointed out that in his advertising for a new tenant, the landlord had asked for greater rent of \$1,775 per month and did not include photographs. Their earlier add on Craigslist at \$1,700 with photographs had drawn 14 responses in one day.

I find that both parties contributed to the delay in finding a new tenant. If the tenants had been able to exercise their full efforts shortly after the September 18, 2011 notice, I believe it highly probable they parties could have found new tenants for December 1, 2011 and avoid the loss. Nevertheless, the instigating factor in the landlord's loss was the tenants' proposal to breach the fixed term agreement.

Therefore, I find that the parties should share the landlord's loss of rent for December 2011 and I award the landlord one-half of it which is \$850.

**Penalty for breach of the fixed term agreement - \$1,700.** There is no liquidated damages clause in the rental agreement and, even if there were, the *Act* limits such to a reasonable estimate of the cost of re-renting the rental unit and any amount above that is seen to be a penalty and is disallowed. Therefore, this claim is dismissed.

**Preparing and painting wall damage caused by pets – \$250.** Unfortunately the landlord's photographic evidence and invoices were not sent to the tenants' current address. The photos include one of a pillar with numerous small indentations the landlord believes were inflicted by the tenants' cats. The tenants gave evidence that they had hired a professional to repair and repaint any damage done by the cats prior to vacating the rental unit. They note that some of the damage is recorded on the move in condition inspection report.

The landlord stated that the unit had last been painted in 2006 except for one bedroom which had been repainted in 2008. As standard depreciation tables place the useful life of interior paint at four years, and as repainting after a tenancy invariably involves some minor patch of picture holes etc., I find that the landlord has not proven that the portion of this cost beyond reasonable wear and tear is attributable to the tenants. The claim is dismissed.

**Deep cleaning of bathroom and kitchen grout - \$112.** Again the landlord's photos show some stain accumulation in the grouting on the kitchen floor and the receipt applies to both the bathroom and the kitchen. As the tenants did not receive this evidence and as I find this claim falls between the tenants' duties in housekeeping and the landlord's duties to maintain, this claim is dismissed.

**Security deposit and pet damage deposits – (\$825 + \$825).** I find that the landlord's application of December 14, 2011 was made within 15 days of the tenants' departure on November 30, 2011 and I need not consider whether the tenancy ended then or on December 31, 2011 on the question. I further find sufficient merit in the landlord's application to consider his claim against the deposits to be quite within his rights and duties under section 38 of the *Act*, despite the tenants' assertions to the contrary. Therefore, I find that the deposits are available for set off against an award to the landlord.

### **TENANTS' CLAIMS**

**Loss of income preparing response to landlord's claims - \$2,517.** While the tenants are both members of the bar, there is no provision within the *Act* to compensate parties for costs or time spent preparing for hearing. This claim is dismissed.

**Filing fees for previous and present applications – \$50 and \$100.** I have no authority to award a filing fee for a previous hearing conducted by another DRO and cannot consider the \$50 claim. As to the present claim, I find insufficient merit in the tenants' application, noted hereinafter, that they are not entitled to recover their filing fee for this proceeding.

**Pain, suffering and aggravated damages - \$5,000.** While I fully appreciate that being party to a monetary dispute can be a stressful experience for both parties, and particularly for the tenants who, having learned that they are expecting their first child, found it necessary to relocate to a less expensive circumstances. However, such anxieties can be common to all participants and should not deprive a landlord of acting in his own interests and seeking lawful remedy. This claim is dismissed.

The landlord also stated that the matter might well have been resolved much earlier if the tenants had not been so insistent on an assignment only, and if they had taken a less adversarial approach in their communications with him.

Thus, I find that accounts balance as follows:

<b>Tenants' credits</b>		
Pet damage deposit	<u>825.00</u>	
Sub total	\$1,650.00	\$1,650.00
<b>Award to landlord</b>		
One-half of December loss of rent	\$850.00	
Filing fee	<u>50.00</u>	
Sub total	\$900.00	- <u>900.00</u>
<b>TOTAL remainder of deposits to be returned to tenants</b>		<b>\$ 750.00</b>

### Conclusion

The landlord is authorized to retain \$900 from the tenants' security and pet damage deposits in set off against the amount found owed to him by the tenants.

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$750.00**, for return of the remainder of the deposits, for service on the landlord if necessary.

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: February 24, 2012.

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Residential Tenancy Branch