



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenants: CNR, FF  
Landlord: OPR, MNR, MND, MNSD, FF

### Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2012 and to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. At the beginning of the hearing, the Parties confirmed that the tenancy has ended and as a result, the Tenants' application (in its entirety) and the Landlord's application for an Order of Possession are dismissed without leave to reapply.

At the beginning of the hearing, the Tenant admitted that she had not served the Landlord with her documentary evidence. As the hearing had to be reconvened for another day of hearing, the Tenant was ordered to serve the Landlord with these documents and the Landlord confirmed on the second day of hearing that she had received all of those that were relevant.

### Issue(s) to be Decided

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to compensation and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This month-to-month tenancy started on January 4, 2010 and ended on January 11, 2011 when the Tenants moved out. Rent was \$850.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$425.00 at the beginning of the tenancy. The rental unit is a basement suite in a house in which the Landlord also resides.

The Landlord said the Tenants did not pay rent for January 2012 when it was due. The Parties agree that it was the Tenants' practice to deposit their rent payment to the Landlord's bank account although on at least one occasion they had made a cash payment to the Landlord in person. The Landlord said she discovered on January 5,

2012 that the Tenants had not deposited their rent payment into her account so she contacted them. The Landlord said the Tenant, M.W., advised her that she left \$850.00 in cash payment in an envelope in her mailbox by her door on December 29<sup>th</sup>. The Landlord said it is her practice to check her mail box daily and there was no such envelope from the Tenants. The Landlord said she found it unusual that the Tenant left cash in an unsecured place and did not advise her that she had done so. Consequently, the Landlord said she served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the following day.

The Tenant, M.W., said he put the cash rent payment in the Landlord's mail box on December 29<sup>th</sup> because she believed she might have to be hospitalized for a back condition and wanted to ensure the rent was paid on time. M.W. said she did not give the payment to the Landlord because the Landlord was confrontational with her only a few days prior about some boxes she had stored in a garage. The Tenant provided a copy of a bank account statement showing that \$850.00 had been debited from that account at some point in December 2011. M.W. said she found it strange that the Landlord did not say anything about not receiving the rent until January 5, 2012.

The Landlord also sought to recover compensation for internet charges. The Landlord said in January 2011, the Tenants asked her to get internet service and she agreed to do so provided that the Tenants paid for half of the cost. The Landlord said the Tenants used the internet service for 8 months but (with the exception of a \$40.00 payment) would not pay her for it so she disconnected their access to it. The Landlord claimed that the Tenants have arrears of \$236.44 for the internet service.

The Tenants said the Landlord told them that their share of the monthly billing would be \$15.00 per month but once it was installed, it turned out to be much more because the Landlord used a different provider and subscribed to more that they had agreed. The Tenants claimed that their access to the internet was constantly interrupted by the Landlord and on one occasion, a cable was cut terminating their service for approximately a month. Consequently, M.W. said she got a wireless stick drive in June or July so that she could use internet through WiFi provided by various businesses and got their own internet account in October 2011 (after the Landlord cut off their access). The Tenants argued that they only had the use of the Landlord's internet service for 5 months and compensated her \$70.00 for it.

The Landlord said she tried to get the Tenants to participate in a move in condition inspection at the beginning of the tenancy but they would not cooperate. The Landlord said a move out condition inspection report was also not completed and she did not give the Tenants a Final Notice to Schedule a Condition Inspection. In any event, the Landlord said that at the beginning of the tenancy, the rental unit was in good condition except for a few marks on a hallway wall. The Landlord said when the Tenants moved out she had to vacuum, clean floors, walls, kitchen and bathroom cupboard and wipe blinds and the inside of the refrigerator. The Landlord also claimed that although most of the rental unit had been painted 6 months prior to the tenancy, it had to be repainted at the end of the tenancy because the Tenants smoked inside. Consequently, the

Landlord sought \$200.00 for her time to clean and paint the rental unit. The Tenants claimed that they thoroughly cleaned the rental unit at the end of the tenancy and that any dents or marks on the walls were there at the beginning of the tenancy. The Tenants said there was no need for the Landlord to repaint the rental unit.

The Landlord also claimed that during the tenancy, she gave the Tenants the use of an electric fireplace to use as a secondary heat source but instead she said they ran it constantly. The Landlord said the fireplace was 6 years old at the beginning of the tenancy but in good condition because it had not been used very often. As a result of the excessive use by the Tenants, however, the Landlord claimed that the fan wore out and now vibrates loudly. Consequently, the Landlord sought compensation of \$222.93 to replace it. The Landlord further claimed that during the tenancy she gave the Tenants the use of a new sofa but at the end of the tenancy, it was extremely worn. Consequently, the Landlord sought compensation of \$339.00 (which represents one half of the replacement cost).

The Tenants claimed that they did not occupy the rental unit often because one of them resided in another province much of the time and the other worked long hours and at times worked extended periods in forestry camps. The Tenants said they made normal use of the sofa and that there was no excessive wear to it. The Tenant said one of the cushions appears to have been flattened but this could easily be remedied. The Tenants also denied that they damaged an electric fireplace by using it excessively. The Tenants admitted that they used the heater because the basement had no heat control and it was often uncomfortably cold. The Tenants admitted that the fan in the fireplace rattled but argued that it was only loose and could easily be repaired.

The Landlord's witness gave oral evidence at the hearing that he viewed the rental unit approximately one week after the Tenants vacated and observed dirt around the refrigerator in the kitchen and scuffs and dings on walls. The Landlord's witness also claimed that the electric fireplace made a loud rattle and the sofa cushions appeared worn.

### Analysis

**Rent:** The Landlord claimed that the Tenants did not pay the rent for January 2012, or alternatively they paid the rent but left it in an unsecured mailbox where it was removed by someone else. The Tenant, M.W., claimed that she left cash for the rent payment in the Landlord's mail box and that the Landlord received it or it was removed by someone else.

I find that rent for January 2012 has not been paid. I find that it does not stand to reason that the Tenants would leave a large amount of cash in the Landlord's unsecured mail box 2 days before it was due and not advise her that it was there when they could have given it to her in person. Although the Tenants provided a copy of a bank statement purporting to show that the rent funds had been withdrawn, the Tenant,

M.W. admitted that the statement actually showed that the funds were transferred to a personal account on December 2, 2011. Consequently, I find that there is no corroborating evidence that the Tenants made the payment as they claimed. Even if the Tenants did put a cash payment in the Landlord's unsecured mail box as they claimed, there is no evidence that the Landlord received it. In the circumstances, I find that the Tenants must bear this loss because they did not take reasonable steps to give the rent payment to the Landlord but instead left it in a place that was accessible to the general public and in particular anyone delivering mail, newspapers or fliers. Consequently, I find that the Landlord is entitled to recover unpaid rent for January 2012 in the amount of **\$850.00**.

The Tenants also argued that they should not be responsible for rent for January 2012 because they moved out on the effective date of the 10 Day Notice. However, RTB Policy Guideline #3 (Claims for Rent and Damages for Loss of Rent) states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one full, calendar month's notice they are ending the tenancy. Consequently, the earliest the Tenants could have ended the tenancy had they given notice on January 6, 2012 (when they received the 10 Day Notice) would have been February 29, 2012. As a result, I find that the Landlord is entitled to recover loss of rental income for January 2012.

**Utilities:** The Landlord claimed that the Tenants agreed to pay for one-half of the internet bill but made a total payment of \$40.00 only. The Tenants claim that they did not agree to pay for the internet package the Landlord ordered and also claimed that they often did not have the use of that service. The Tenants further claimed that they made total payments of \$70.00.

The Landlord provided a copy of a document on which the Tenants had written estimated charges for the internet prior to the Landlord subscribing to it. That document shows that it was to be \$20.00 per month for the first 3 months and then \$37.00 per month thereafter. The Landlord's billing statement however shows that she subscribed to another service at a charge of \$59.00 per month. Consequently, I accept the Tenants' evidence that they did not agree to this service and believed they would only be responsible for approximately \$15.00 per month. I also accept the evidence of W.W. that in reliance on this belief, he made two payments of \$15.00 and two payments of \$20.00 to the Landlord. I find that there is no evidence that the Landlord advised the Tenants during the tenancy of the actual cost of this service or gave them a copy of the billing invoices.

Consequently, I find that the Tenants are only responsible for one-half of the service plan to which they agreed. The Tenants claimed that they only had this service for 5 months but could not say which months they were. The Landlord claimed she got the service in February 2011 and terminated the Tenant's access to it in October 2011

however the Landlord provided no invoices in support of this assertion. Consequently, I find that the Landlord is entitled to be compensated for internet charges over a 5 month period or \$86.10 [ie.  $(\$23.95 \times 3) + (\$40.95 \times 2) \times 12\% \text{ HST} = \$172.20$ ]. The Landlord did not give the Tenants any receipts for their payments made in cash and therefore, I accept the evidence of the Tenants that they made total payments of \$70.00. I find that there is insufficient evidence of alleged interruptions in service as alleged by the Tenants to warrant a reduction in the portion for which the Tenants are responsible. Consequently, I find that the Landlord is entitled to recover utility arrears of **\$16.10**.

**Cleaning and Repairs:** Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy. A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

Consequently, the Landlord has the burden of proof and must show that the rental unit was not reasonably clean and undamaged at the end of the tenancy. However, the Landlord did not complete a condition inspection report at the beginning or at the end of the tenancy. As a result, I find that there is no reliable evidence of the condition of the walls at the beginning of the tenancy and therefore I find that there is insufficient evidence to conclude that the Tenants were responsible for damaging the walls. The Landlord relied on the evidence of her witness to corroborate her claim that the rental unit was not reasonably clean at the end of the tenancy. I did not find the Landlord's witness helpful on this issue because he only corroborated the Landlord's evidence that there was some debris on the kitchen floor around the refrigerator and some dings in the walls. The Tenants claim that they left the rental unit reasonably clean. Given the contradictory evidence of the Parties and in the absence of any reliable corroborating evidence from the Landlord, I find that there is insufficient evidence to support the Landlord's claim for cleaning and painting expenses and they are dismissed without leave to reapply.

**Electrical Fireplace and Sofa:** The Landlord said a new sofa was damaged by excessive wear and a 6 year old electric fireplace was also damaged as a result of excessive use. The Landlord relied on the corroborating evidence of her witness as well as a photograph of the sofa at the end of the tenancy in support of his part of her claim. Based on the photographic evidence of the Landlord, I find that the sofa cushions show some discoloration, however, I cannot conclude that this represents excessive or unreasonable wear as the Landlord claims. Furthermore, in the absence of any reliable evidence of the condition of the electric fireplace at the beginning of the tenancy (such as a condition inspection report), I find that there is insufficient evidence to conclude that it was in good condition. I also find that there is insufficient evidence

that at the end of the tenancy that the fireplace was irreparably damaged due to an act or neglect of the Tenants. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee she paid for this proceeding. Consequently, I find that the Landlord is entitled to a total monetary award of \$916.10. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$425.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$491.10.

### Conclusion

The Tenants' application in its entirety and the Landlord's application for an Order of Possession are dismissed without leave to reapply. A Monetary Order in the amount of **\$491.10** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: February 20, 2012.

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Residential Tenancy Branch