



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF, O

### Introduction

The tenants' original application received by the Residential Tenancy Branch (RTB) on February 16, 2012 was unsigned, undated and did not specify either an amount of their apparent application for a monetary Order or the nature of their dispute other than the recovery of their filing fee and the "Other" category on their application for dispute resolution. The tenants' corrected application for dispute resolution dated and signed on February 20, 2012 and received by the RTB that day identified the following nature of their dispute in their application pursuant to the *Residential Tenancy Act* (the *Act*):

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72; and
- other remedies, which they described in the details of their dispute as their attempt "to recover the money for rent and other expenses totalling \$3,122.50."

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their dispute with one another. The tenants confirmed that the female landlord (JK) handed them a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on February 7, 2012.

The landlords confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on February 21, 2012.

At the hearing, the landlords confirmed that they had not submitted a separate application for dispute resolution. The male landlord (HE) requested an end to this tenancy and an Order of Possession if the tenants' application for dispute resolution were dismissed. The landlords' 1 Month Notice identified March 7, 2012 as the effective date to end this tenancy. In accordance with the *Act*, I note that the landlords' 1 Month Notice is corrected to March 31, 2012, the earliest date that the 1 Month Notice could take effect.

Although the tenants entered into written evidence a copy of the landlords' 1 Month Notice, the tenants did not apply to cancel the 1 Month Notice. I also noted that even if I

were to have considered the tenants' application for dispute resolution as an attempt to cancel the 1 Month Notice, they did not submit a signed and dated application for dispute resolution until after the 10-day period for applying to cancel the 1 Month Notice had expired. Without an application to cancel the 1 Month Notice before me, I advised the landlords that I could not hear the landlords' oral request to end this tenancy and issue an Order of Possession.

At the hearing, I advised the parties that the tenants' application for dispute resolution did not specifically note that they were seeking a monetary award for losses arising out of this tenancy. However, the male landlord confirmed that the landlords realized that the tenants were seeking a monetary award of \$3,122.50. On this basis, I agreed to consider the tenants' application for a monetary award of \$3,122.50, the amount noted in their application for dispute resolution.

As the tenants remain in the rental premises, they are not entitled to a return of their security deposit at this stage of their tenancy. As such, the tenants' application for a return of their security deposit is not an issue before me and is withdrawn as premature.

#### Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are the tenants entitled to recover their filing fee from this application from the landlords?

#### Background and Evidence

This one-year fixed term tenancy commenced on December 1, 2011. Monthly rent is set at \$775.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$382.50 security deposit paid on or about December 1, 2011.

When the tenants applied for dispute resolution they were still residing in the rental unit. However, they noted that they were hoping to remain in the rental unit until May 1, 2012.

In the attachment to their application for a monetary award of \$3,122.50, the tenants explained that "We believe we should be reimbursed for the months we spent in the apartment not really living." Their application for a monetary award of \$3,122.50 included the following:

Item	Amount
Recovery of December 2011 Rent	\$765.00
Recovery of January 2012 Rent	765.00
Recovery of February 2012 Rent	765.00
Moving Truck	120.00
15 Hr Missed Work	285.00
Filing Fee	50.00
Return of Damage Deposit	382.50

### Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve their dispute under the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 31, 2012, by which time the tenants agreed that they will have vacated the rental premises.
2. The tenants agreed to withdraw their application for a monetary claim.
3. The landlords agreed that they would not attempt to recover rental losses from the tenants arising from the remainder of this fixed term tenancy.
4. Both parties agreed that the landlord will be allowed to show the rental premises to prospective new tenants with 24 hours written notice from the landlords or their agents.
5. Both parties agreed that these terms constituted a final and binding resolution of all matters in dispute between them at this time arising out of this tenancy.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlords if the tenants do not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. 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: March 08, 2012

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Residential Tenancy Branch