



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB  
CNC, MNDC, MNSD, OLC, LRE

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for an order of possession for cause and an order of possession for breach of an agreement. The application by the tenants is to cancel a notice to end tenancy for cause, money owed or compensation due to damage or loss, return of the security deposit, order the landlord to comply with the *Act* and restrict the landlord's right to enter. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to the above under the *Act*.

### Background and Evidence

This tenancy began October 15, 2011 and in lieu of monthly rent the tenants paid the monthly utility bill. The understanding was that the tenants would 'house sit' while the property was being renovated.

On March 2, 2012 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause:

- The tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified at the start of the hearing that the tenants had vacated the rental unit on March 27, 2012 and returned the keys to the landlord. As the landlord now has full possession of the rental unit an order of possession for the rental unit is no longer required. Therefore the landlord's application for an order of possession and the tenant's application to have the notice to end tenancy set aside are hereby dismissed.

The landlord stated that they have also agreed to return the tenant's \$100.00 security deposit in full to the tenants therefore this portion of the tenant's application is hereby dismissed.

The tenants testified that because of the landlord's actions the tenant's had to find alternate housing and incurred additional moving costs. The tenants stated that they were not able to rent a truck for their move and that they used a small truck, SUV and small car to move all of their belongings. The tenant stated that he did not have any gas receipts but estimated that it cost approximately \$150.00 in gas for all 3 vehicles. The tenants are seeking \$300.00 compensation for moving costs in this application.

The landlord testified that they did not believe that it would have cost anywhere near \$150.00 for gas as the distance the tenants had to drive during their move was only 6 miles. The landlord also pointed out that no receipts for this expense have been provided.

The tenants stated that the landlord had given them the notice to end tenancy without just cause and because the tenants had to vacate with short notice, they are seeking 1 to 2 months rent compensation. A monetary number has not been assigned to this portion of the application.

The landlord challenged the tenant's statement about the notice not being served for just cause and stated if there was no just cause to end the tenancy, why did the tenants vacate the rental unit.

The tenants stated that during the tenancy their pet cat suffered an injury which required attention from a veterinarian. The tenants stated that they always kept the cat upstairs in their portion of the property and had a baby gate set up to keep the cat out of the lower portion that was being renovated. The tenants stated that the landlord brought a plumber into the rental unit on February 2, 2012 without prior notification to the tenants, and they believe this was when the cat was injured. The tenants stated that the injury was not initially noticeable and it was on February 7, 2012 that they realized the cat was in distress and took it to the vet. The tenants maintained that there was nothing in their portion of the rental unit that the cat could have injured it's self on and that this is an indoor cat. The tenants also stated that on the day in question when then came home they found the cat had been shut in the bedroom. The tenants are seeking \$428.73 compensation for a veterinary bill in this application.

The landlord stated that she had gone to the rental unit on February 2, 2012 with a plumber to determine the scope of a job for repair of a leak in the rental unit. The landlord stated that this was not the first time that contractors were at the property with the cat. The landlord stated that being a pet owner herself she would have ensured that no harm came to the tenant's pet. The landlord referred to a witness statement from the plumber who states that they noticed the cat in the house and were very careful to close the door when they left the property. The witness statement goes on to say that the tenants had called the plumber the next day to verify if he had been to the property.

The tenants stated that the landlord caused them a great deal of stress and grief during the tenancy. The tenants stated that they lost wages due to the landlord's actions but

could not provide evidence for this claim. The tenants stated that being served with an eviction notice in January had been very stressful as was service of the hearing documents when one of the tenants was served at her place of business.

The tenants stated that the landlord had also given them the run around when they were attempting to serve documents for this hearing on the landlord as they had called the landlord a number of times, were promised a call back and never received one. The tenants also stated that it was stressful when the landlord accused them of harassing the contractors that were coming to the property.

The tenants stated that the rental unit had been very cold and that the insulation was never installed as promised. The landlord countered this claim by stating that the insulation the tenants were referring to was in the basement and that the tenant's portion of the rental property was fully insulated.

The landlord countered the tenant's claim of the landlord causing the tenants stress and grief and referred to the tenant's repeatedly calling the landlord for personal service of documents which was not required. The landlord stated that the representative being called by the tenants did not respond to the tenant's calls as this person had been confronted by the tenants and was attempting to avoid another confrontation. The landlord also referred to witness statements from 3 different contractors who state that they will not return to the rental property to complete renovations until the property is vacant due to problems with the tenants.

The landlord stated that it was nothing more than trickery by the tenants when they maintained they would stay in the rental unit, found a new rental unit and then purposely delayed vacating the rental unit. The landlord stated that they had been honest with the tenants from the beginning and have tried to work through their mistakes. The landlord maintained that the tenant's claim was completely unreasonable and that for the length of this tenancy the tenant's had only been required to pay \$1598.00 in utilities used by them.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation due to damage or loss.

It is recognized that the tenants would have required gas for the vehicles during their move however the tenant's have not submitted gas receipts into evidence to establish this expense. It must also be considered that the landlord had issued the tenants a notice to end tenancy and the tenants choose to end the tenancy based on this notice.

The landlord therefore is not responsible for the tenant's moving costs and this expense rests with the tenants.

It is acknowledged that the tenant's cat suffered an injury during this tenancy however it is impossible to determine how this injury happened and who if anyone is responsible. It could not be established if the cat jumped and hurt its self or if someone attending the property somehow caused an injury to the cat. Without proof to establish the cause of the injury, it is not reasonable for the landlord to be held responsible for this expense.

The tenants testified that being served a notice to end tenancy and then hearing documents was very stressful and it is acknowledged that this can be a stressful process for both parties. The landlord however was acting in their capacity of a landlord and not acting outside of the Act. The tenants also referred to what they considered false allegations by the landlord and the tenants harassing contractors on the property. The landlord has submitted statements from a number of contractors who state that they will not continue work at the property until it is vacant. The landlord also noted that if the notice to end tenancy could be disputed, why then did the tenants vacate.

The tenants were very aware when they entered into this tenancy that there was to be extensive renovation being completed at the property and that the landlord and contractors would be at the property on a regular basis. It appears that partway through the tenancy communication between the parties broke down and I do not find it reasonable for the tenants to now see compensation for actions of which they were a part of.

The tenant's application is dismissed in its entirety.

### Conclusion

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

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 29, 2012

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Residential Tenancy Branch