



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MND, MNSD, FF

### Introduction

This hearing was scheduled in response to an application by the landlords for a monetary order as compensation for unpaid rent / damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from August 1, 2011 to July 31, 2012. Monthly rent of \$1,550.00 is payable in advance on the first day of each month, and a security deposit of \$775.00 was collected. A move-in condition inspection report was not completed with the participation of both parties at the outset of tenancy. Rather, the landlords testified that the report was completed by them and reflects their assessment of the condition of the unit.

By letter dated December 13, 2011, the tenants gave notice to end the tenancy effective January 31, 2012. A move-out condition inspection report was not completed with the participation of both parties. As with the move-in condition inspection report, the landlords completed the report themselves and it reflects their assessment of the condition of the unit at the end of tenancy. As a result of advertising undertaken by the landlords, new renters were found effective March 1, 2012.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the landlords' claim and my findings around each are set out below.

**\$1,550.00\***: *loss of rental income for February 2012*. Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides in part:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenants' failed to comply with the Act, as above, in their manner of terminating of the tenancy. I also find that the landlords undertook to mitigate their loss by advertising for new renters in a timely fashion. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

**\$25.00\***: *fee for returned cheque*. By way of the tenancy agreement, as the tenants were responsible for payment of rent for February 2012, I find that the landlords have established entitlement to the full amount claimed.

**\$101.00\***: *hydro*. As this amount is established pursuant to an equal payment plan, I find on a balance of probabilities that the landlords have established entitlement to the full amount claimed.

**\$57.39\***: gas (to February 20, 2012). Even while the tenants no longer resided in the unit for the month of February 2012, I find that a minimum level of indoor heating was required to be maintained during what were outdoor winter temperatures. In the result, I find that the landlords have established entitlement to the full amount claimed.

**\$35.84\***: rental advertising. I find that the paid advertising undertaken by the landlords reflects their efforts to mitigate the loss of rental income. I therefore find that the landlords have established entitlement to the full amount claimed.

**\$80.00**: cleaning. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

The attention of the parties is also drawn to the following sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 17 of the Regulation speaks to **Two opportunities for inspection**, in part:

17(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form **[emphasis added]**.

The “approved form” refers to RTB – 22, “Notice of Final Opportunity to Schedule a Condition Inspection.”

In the absence of the comparative results of move-in and move-out condition inspection reports completed with the participation of both parties, and in the absence of a

completed "Notice of Final Opportunity to Schedule a Condition Inspection" form, I find that the landlords have not proven entitlement to this aspect of their application and it is, therefore, hereby dismissed.

\$9.96: supplies. For reasons related to those set out immediately above, this aspect of the application is hereby dismissed.

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Expenses arising from showing the unit

\$85.00: travel;      \$20.00: kennel;      \$40.94: meal.

I find that these costs reflect the landlords' cost of doing business and would likely have been incurred even had tenancy concluded at the end of the fixed term. Accordingly, these aspects of the application are hereby dismissed.

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Repairs & maintenance

\$15.00: door trim. Estimate only, no actual cost incurred. Dismissed.

\$10.00: light fixture. Estimate only, no actual cost incurred. Dismissed.

\$5.00: door stops. Estimate only, no actual cost incurred. Dismissed.

\$14.00: road salt. I find on a balance of probabilities that weather conditions around the time when tenancy ended, impeded the tenants' ability to complete the removal of snow & ice from the driveway. In the result, I find that the landlords have established entitlement limited to **\$7.00\***, which is half the amount claimed.

\$130.00: vertical blinds. Estimate only, no actual cost incurred. Dismissed.

\$14.00: mini blinds. Estimate only, no actual cost incurred. Dismissed.

\$25.00: repair basement door. Estimate only, no actual cost incurred. Dismissed.

\$33.57: front door knob. In the absence of move-in and move-out condition inspection reports completed with the participation of both parties, this aspect of the application is hereby dismissed.

\$2.97: window screen clips. Estimate only, no actual cost incurred. Dismissed.

\$22.97: lights bulbs. I note the photographic evidence, and I find on a balance of probabilities that there were an unknown specific number of light bulbs in need of replacement at the end of tenancy. The landlords testified that these were replaced from a supply already on hand. Accordingly, I find that the landlords have established entitlement limited to \$11.49\*, which is half the amount claimed.

\$9.24: cleaning supplies. As earlier noted, there are no comparative results of move-in and move-out condition inspection reports completed with the participation of both parties in evidence. This aspect of the application is, therefore, hereby dismissed.

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\$7.75: line of credit interest (6% x \$1,550.00). I find that this aspect of the claim reflects the landlords' cost of doing business and it is hereby dismissed.

\$50.00\*: filing fee. As the landlords have achieved a measure of success with their application, I find that they have established entitlement to full recovery of the filing fee.

Sub-total: \$1,837.72\*

Following from the above I find that the landlords have established a claim of \$1,837.72. I order that the landlords retain the security deposit of \$775.00, and I grant the landlords a monetary order under section 67 of the Act for the balance owed of \$1,062.72 (\$1,837.72 - \$775.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlords in the amount of \$1,062.72. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court 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: April 10, 2012.

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Residential Tenancy Branch