



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: OPR, OPB, MNR, MND, MNDS, FF  
Tenant: OPT, AAT, RPP, LAT, LRE, MNDC

### **Introduction**

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Tenant applied for an Order of Possession, for an order granting him and his guests access to the rental property, for an Order permitting him to change the locks on the rental unit, for an Order restricting the Landlords' from entering the rental unit and for an Order requiring the Landlords to return his personal property and for compensation for damage or loss under the Act or tenancy agreement.

At the beginning of the hearing, the Tenant withdrew his application for an Order of Possession. Consequently, I also find that the balance of the relief sought by the Tenant (with the exception of his claim for compensation) must be dismissed without leave to reapply. As the Tenant has already vacated the rental unit, the Landlords' application for an Order of Possession is also dismissed without leave to reapply.

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

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation and if so, how much?
3. Is the Tenant entitled to compensation and if so, how much?

### **Background and Evidence**

The rental unit is a room in a boarding house in which the Tenant shares common areas with 5 or 6 other tenants. This fixed term tenancy started on August 26, 2011 and expired on April 30, 2012. The Parties' tenancy agreement contains a term that says at the end of the fixed term, the Tenant must vacate the rental unit unless the Parties have agreed to continue the tenancy by executing a further tenancy agreement. Rent was \$540.00 per month. The tenancy agreement says that rent is due in advance on the 1<sup>st</sup> day of each month however the Landlords claim it was their practice to collect rent in

advance on the 26<sup>th</sup> day of the preceding month. The Tenant paid a security deposit of \$270.00 at the beginning of the tenancy.

The Landlords said that the Tenant's rent was paid on his behalf by the Ministry of Employment and Income Assistance and that although the cheque each month was made payable to the Landlords, the Tenant would pick it up and deliver it to the Landlords (except in December 2011 and February 2012). The Landlords claim that the Tenant often "played games" with them claiming either that he did not receive the cheque or had misplaced it. The Landlords said on March 27, 2012, they had not received the Tenant's rent payment for April 2012 and as a result, they served him with a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlords said the Tenant gave them notice that he would be vacating on April 15, 2012 but did not do so. The Landlords said the Tenant did not pay rent for April and by April 30, 2012 refused to move out or to speak to them and threatened to punch their son when he approached the Tenant to speak to him. The Landlords said they called the RCMP in response to the Tenant's threats and when the Tenant became verbally abusive with the RCMP members who attended, they advised him to leave the rental property. The Landlords claim the RCMP member also advised them to change the locks because the Tenant would not return his keys. The Landlords said they arranged for the Tenant to pick up his belongings on May 4, 2012 with the RCMP in attendance.

The Tenant claimed that the Landlords received a rent payment for April 2012 but he was unable to obtain a receipt for it from the Ministry. The Tenant denied that he made threats to the Landlords or their son on April 30, 2012 and instead claimed that the Landlords' son began yelling at him outside of his door so he yelled back. The Tenant claimed that the Landlords manipulated the RCMP into believing that he was a threat in order to remove him from the rental property. The Tenant said he was left with no where to go and had to stay with friends for approximately 2 weeks until he could find another residence. The Tenant said 99% of his belongings were returned to him however a camera with a retail value of approximately \$110.00 was not returned. The Landlords deny that the Tenant had a camera. The Tenant said the Landlords also acted maliciously by dumping the contents of an ashtray into some clothing. The Tenant also claimed that he lost employment income for 10 days (of approximately \$1,400.00) while he tried to locate other accommodations.

The Landlords also claim that during the tenancy, the Tenant broke into a coin operated washing machine and dryer, stole approximately \$400.00 in coins and caused \$1,000.00 in damages. The Landlords claim that another tenant of the rental property witnessed the vandalism and provided a witness statement to that effect. The Tenant argued that the Landlords coerced the other tenant of the rental property into giving a witness statement. The deponent of the witness statement did not attend the hearing to be questioned on his statement.

The Landlords further claim that the Tenant smoked in the rental unit contrary to the terms of the tenancy agreement and put holes in the walls where he had hung pictures.

The Landlords claim that they had to repaint the rental unit and replace the drapes due to the Tenant smoking. The Landlords also claimed that the Tenant broke a pane of glass in the window, another piece of glass on a dresser and damaged the door to his room. The Landlords said they completed a condition inspection report with the Tenant at the beginning of the tenancy and tried to arrange a move out inspection with him on April 9 and April 26, 2012 but he did not show up on either occasion. The Landlords said they did not do a move out inspection with the Tenant on May 4, 2012 when he picked up his belongings because the RCMP did not want the Tenant there. Consequently, the Landlords completed a move out condition inspection report without the Tenant on May 4, 2012 and took photographs.

The Tenant denied smoking in the rental unit and claimed all of the other tenants of the rental property also smoked (which the Landlords denied). The Tenant said he only used a few thumbtacks to hang pictures. The Tenant denied damaging a door and claimed that all of the doors in the rental property were old and that the property had not been maintained by the Landlords (which the Landlords denied). The Tenant said he returned to the rental unit one day to find the window pane broken and reported it to the Landlords but they would not repair it.

## **Analysis**

### **Tenant's Application:**

The Tenant sought compensation of approximately \$1,400.00 in lost wages as he claimed that he was wrongfully removed from the rental property by the Landlords on April 30, 2012. However, I find that the Tenant is not entitled to recover this compensation for the following reasons. Firstly, in order to recover compensation, the Tenant must show that the Landlords breached the Act or tenancy agreement however I find that there is no evidence that the Landlords breached the Act or tenancy agreement. Under the parties' tenancy agreement, the Tenant was required to vacate at the end of the fixed term or on April 30, 2012. I find that the Tenant was well aware of this and in fact gave the Landlords his notice to end the tenancy earlier (on April 15, 2012) but failed or refused to vacate. I also find that the Landlords did not remove the Tenant from the rental property on April 30, 2012 but that instead, the RCMP removed the Tenant because he was being disruptive and threatening. Secondly, I find that the Tenant has provided no evidence that he lost wages. Consequently, the Tenant's application for lost wages is dismissed without leave to reapply.

I also find that there is insufficient evidence that the Tenant had a camera and that the Landlords failed to return it as alleged. Consequently, this part of the Tenant's application is dismissed without leave to reapply.

Section 38 of the Act says that a Landlord is not required to return a Tenant's security deposit until a Tenant has provided the Landlord with his forwarding address in writing. The Parties agree that the Tenant did not provide the Landlords with his forwarding

address in writing. However, given that the Landlords have also made a claim against the security deposit, it has been dealt with as a part of the Landlords' claim.

#### Landlords' Application:

In the absence of any reliable evidence from the Tenant that he paid rent for April 2012, I find on a balance of probabilities that rent of \$540.00 has not been paid for that month and I award the Landlords that amount. I also find that the Landlords are entitled to recover a late payment fee of \$25.00 pursuant to a term of the Parties' tenancy agreement to that effect.

Section 32(4) and (5) of the Act say that a Tenant is responsible for damage that results from his act or neglect (or that of a person he permits on the property) but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines reasonable wear and tear as "natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

I find that there is insufficient evidence to conclude that the Tenant was responsible for vandalizing a coin operated washer and dryer. The only evidence of this was an unsworn witness statement from another tenant of the rental property who claimed that he withheld this information from the Landlords until he was advised by the Landlords that the Tenant had stolen his keys. The deponent of the witness statement did not attend the hearing to be questioned on his statement in order to determine its truthfulness or reliability. Consequently, I find that the unsworn statement is hearsay and I give it little weight. In the absence of any other evidence, I find that the Landlords have not shown on a balance of probabilities that the Tenant vandalized the washer and dryer and their claim for compensation of \$1,400.00 for repair expenses and estimated lost revenue is dismissed without leave to reapply.

I find that smoking in the rental unit is prohibited under the terms of the Parties' tenancy agreement. The Tenant denied that he smoked in the rental unit and claimed any smell was from an ashtray. However the Landlords claim that their son saw the Tenant with a lit cigarette inside the rental unit and that they gave the Tenant a breach letter on March 6, 2012 about smoking in the rental unit. The Landlords also claim that at the end of the tenancy, the rental unit smelled of cigarette smoke. Given the contradictory evidence of the Parties on this issue and in the absence of any additional or corroborating evidence from the Landlords (who bear the burden of proof), I find that there is insufficient evidence that the Tenant smoked inside and that if he did, it could only be remedied by repainting the rental unit. For the same reasons, I find that there is insufficient evidence that drapes had to be replaced due to the Tenant smoking.

Based on a photograph provided by the Landlords I find that the Tenant did leave a few large nail holes in the walls and as a result, I find that the Landlords are entitled to their reasonable repair expenses which I assess at \$50.00. I also find based on the Landlords' photographs that the Tenant damaged a piece of glass on a dresser. The

Landlords did not provide a receipt or estimate to show what it would cost to replace this item and as a result, I award them damages of \$50.00 representing the reduced value of the glass dresser top.

Given the contradictory evidence of the Parties regarding the broken window pane in the rental unit, I cannot conclude that the Tenant was responsible for the damage and therefore that part of the Landlords' claim is dismissed without leave to reapply. For similar reasons, I also find that there is insufficient evidence to conclude that the damage to the door of the rental unit was the result of an act or neglect of the Tenant as opposed to reasonable wear and tear. (Note, RTB Policy Guideline #40 says that the useful lifetime of an interior door is 20 years).

Consequently, I find that the Landlords are entitled to \$100.00 for repair expenses, \$540.00 for rent for April 2012 and \$25.00 for a late fee. I also find that the Landlords are entitled to recover from the Tenant the \$50.00 filing fee they paid for this proceeding for a total monetary award of \$715.00.

I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$270.00 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$445.00.

### **Conclusion**

The Tenant's application for an Order of Possession is withdrawn and the balance of his application is dismissed without leave to reapply.

The Landlords' application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of \$445.00 has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: May 31, 2012.

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Residential Tenancy Branch