



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC and FF

### Introduction

This hearing was convened on the tenants' application for return of rent, moving and storage costs, and recovery of the filing fee for this proceeding on the grounds that they were forced to vacate the rental unit shortly after the tenancy began as their pet dogs breached a Strata bylaw of which they had not been aware.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award for all or part of the claims submitted?

### Background and Evidence

During the hearing, the parties presented documentary and verbal evidence that they had completed an Application for Rent of Suite by which the tenants would begin a fixed term rental agreement starting March 1, 2012. Rent was set at \$1,400 per month, but, when the landlord was unable to provide occupancy in mid-February as anticipated, she compensated the tenants with a rent reduction to \$1,100 for the first month, even though the tenants were permitted to move in on February 26, 2012. The tenants paid a security deposit of \$700 which has since been returned.

There is no rental agreement, but the landlord stated she has customarily used the application for tenancy as the rental agreement.

The parties are in agreement that the female tenant on meeting with the landlord advised that she had a terrier breed of dog.

The tenant recalls that she had specifically disclosed that she had two Staffordshire Terriers, but the landlord recalled only one and did not recall hearing about and would not have recognized the specific breed.

When the tenants took occupancy on February 26, 2012, the landlord provided them with a copy of the Form K as required under the *Strata Properties Act* and had intended to provide the tenants with a copy of the strata bylaws when the signed form was returned to her.

The tenants had completed the form, including disclosure of the names and breed of the dogs, but it had not been returned to the landlord in exchange for the bylaws when, on or about March 5, 2012, the strata manager advised them that the “pitbull type” dogs were prohibited by the bylaws and that if they were not removed, the landlord would be subject to a \$200 fine per week. The tenants advised the landlord who stated they would have to remove the dogs or pay the fines. The tenants declined and moved on March 6, 2012.

The tenants now claim for return of rent and moving and storage costs.

### Analysis

On hearing the evidence of both parties, I am persuaded that both parties made the agreement in good faith and neither had any intention to deceive the other.

However, I find that both innocently failed to fully and plainly disclose material facts to the other.

I find that the landlord erred in not providing a copy of the strata bylaws to the tenants with the Form K before granting occupancy, and therefore failed to disclose key elements of their obligations and restrictions under the rental agreement.

I find that the tenants, while they knew their own dogs to be clean, obedient and well trained, knew or ought to have known, that the breed of their dogs was generically mixed in with the controversial “Pitbull” category should have alerted the landlord to that fact.

Therefore, I find that the tenancy failed as a result of errors on the part of both parties in creating the agreement and they should share equally in the consequent losses.

Therefore, I find that the tenants are entitled to a monetary award, based on their claims as submitted and calculated as follows:

**Return of rent - \$1,100.** The tenants concur that they responsible for the per diem rent for the period during which they occupied the rental unit from February 26, 2012 to March 6, 2012, a period of 10 days. At a per diem of \$1,100/31, I find the tenants owe \$354.83 in rent, leaving a shared loss of \$745.17 or \$372.59 each, the amount of rent which the landlord must return to the tenants

**Moving expenses - \$493.42.** A receipt in support of this claim was submitted and I find that, shared equally, the tenants are entitled to recover \$246.71 of this expense from the landlord.

**Storage fees - \$251.08.** A receipt in support of this claim was submitted and I find that, shared equally, the tenants are entitled to recover \$125.54 of this expense from the landlord.

**Filing fee - \$50.** I find that the filing fee should also be shared equally between the parties and award the tenants \$25 on this claim.

Thus, I find that the landlord owes to the tenants:

Return of rent	\$372.59
Storage fees	125.54
Filing fee	25.00
<b>TOTAL</b>	<b>\$769.84</b>

Conclusion

Accordingly, the tenants' copy of this Decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$769.84, for service on the landlord.

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 11, 2012.

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Residential Tenancy Branch