



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: MNR, MNSD, FF  
Tenant: MNDC, MNSD

### **Introduction**

This matter dealt with an application by the Landlords for compensation for a loss of rental income, 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 compensation for damage or loss under the Act or tenancy agreement and for the return of a security deposit.

At the beginning of the hearing, the Tenant said she did not serve the Landlords with her documentary evidence and as a result, I find that it is excluded pursuant to RTB Rule of Procedure 11.5(b). However, the Tenant was permitted to refer to the evidence in her oral evidence.

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

1. Are the Landlords entitled to compensation and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

### **Background and Evidence**

This fixed term tenancy started on February 15, 2012 and was to expire on August 31, 2012 however it ended on March 31, 2012 when the Tenant moved out. Rent was \$400.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$200.00 at the beginning of the tenancy. The Tenant's rent included the exclusive use of a bedroom and shared use of common areas (eg. kitchen and bathroom facilities) with another tenant of the suite on the ground floor of the rental property.

The Parties agree that the Tenant gave the Landlords written notice on March 14, 2012 that she would be ending the tenancy as of April 1, 2012. The Tenant said she decided to leave because she did not feel safe. In particular, that a few days after she moved in, the Landlord's agent attended the suite to serve a Notice to End Tenancy on her

roommate but she would not come out of her room. Consequently, the Tenant said the Landlord's agent yelled at, pounded at the other occupant's door, set up chairs outside her room and threatened to stay there until she came out. The Tenant said the Landlord's agent finally left after she agreed to sign a statement saying she witnessed him slide the documents under the bedroom door. The Tenant said the Landlords also removed the lock from a door that gave access to the suite from the main floor. The Tenant said she asked the Landlords to give her proper notice when they would be entering her and her roommate's suite, however, the Landlords advised her that they were entitled to suite whenever they felt like it. The Landlords admitted that they believed this to be the case.

The Tenant said on one occasion, she witnessed the Landlord's agent showing her roommate's room while she was not home and had given no notice. The Tenant said the Landlords also showed her room on one occasion without given her notice when she was not home. The Landlords denied showing any occupied bedrooms without notice to the tenants.

The Tenant claimed that some kitchen renovations were supposed to be completed before she moved in but that they were not completed until almost 2 weeks later. The Tenant also claimed that the furnace was not working and that the rental unit was uncomfortably cold. The Tenant further claimed that the Landlords sometimes collected her mail and on one occasion told her they had put it under her door but when she checked there was no mail there. The Tenant said she believes the Landlords may be responsible for a missing BCID card that was mailed to her in early March 2012.

The Landlords said they were able to re-rent the rental unit as of April 22, 2012 and therefore lost rental income from April 1 – 21, 2012. The Parties agree that the Tenant did not give the Landlords a forwarding address in writing and they did not know how to contact the Tenant until they received her application for dispute resolution. The Tenant said she did not give the Landlords written authorization to keep her security deposit and it has not been returned to her.

## **Analysis**

### **The Tenant's Claim:**

Section 28 of the Act says that a Tenant has a right to quiet enjoyment which includes (but is not limited to) the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the Landlord's right to enter under s. 29 of the Act and to the use of common areas for reasonable and lawful purposes free from significant interference.

Section 29 of the Act says a Landlord must not enter a rental unit without the Tenant's permission while the tenant still occupies it unless there is an emergency. Otherwise a

Landlord must give a Tenant 24 hour's written notice of entry (which must be for a reasonable purpose) or obtain the Tenant's permission to enter at the time of the entry.

The Parties' tenancy agreement says "*the rental premises is the sharing [of a] three bedroom suite.*" Although the tenancy agreement states that the Landlords must give notice to a tenant before entering their room, the tenancy agreement *does not* grant the Landlords the unrestricted right to enter the suite whenever they choose and without any notice to the tenants. In the absence of such a term in the tenancy agreement, I find that the Landlords did not have the right to enter the Tenant and her roommate's suite unless they had complied with s. 29 of the Act by either getting their consent or giving written notice of entry. Consequently, I find that the Landlords breached s. 29 of the Act each time they entered the suite without getting the consent of at least one of the tenants or giving them a 24 hour written notice.

Furthermore, I find that the Landlords breached the Tenant's right to quiet enjoyment on at least one occasion when they entered the tenants' suite for the purpose of serving a one month notice on the Tenant's roommate and engaged in a loud argument with her and refused to leave. I also find that the Landlords have entered the common areas of the tenants' suite without their permission on many other occasions despite their protests. Although the Tenant claimed that she witnessed the Landlords enter her roommate's bedroom on one occasion without notice, I find that this would not constitute a breach of the Tenant's right to privacy but rather her roommate's. The Tenant also claimed that the Landlords entered her bedroom without her consent but admitted that this was after she had already moved into other accommodations. Consequently, I award the Tenant \$200.00 for her loss of quiet enjoyment for the 1½ months during which she resided in the rental property.

I find that there is insufficient evidence to conclude that the rental property was not sufficiently heated during the tenancy or that the furnace was in a state of disrepair. I also find that there is insufficient evidence to conclude that the Landlords took the Tenant's mail. However, I find that the Tenant did lose the use of the kitchen facilities for the first two weeks of the tenancy. Although the Landlords claimed the Tenant was advised of the renovations before she moved in, I accept the evidence of the Tenant that she was also advised by the Landlords that the repairs would be done by the time she moved in. Furthermore s. 32(5) of the Act says that "a Landlord's obligation to maintain a rental property in a state of repair (and to provide facilities) applies even if a tenant is aware of the breach. Consequently, I award the Tenant a further \$50.00 for the loss of use of kitchen facilities during the first two weeks of the tenancy.

Section 38(1) of the Act says a Landlord's obligation to return a security deposit does not arise until the tenancy has ended and the Tenant has given the Landlord a forwarding address in writing where they want the security deposit sent. Although the Tenant claimed her address on her application for Dispute Resolution was her forwarding address, I find that this is instead an address for service of documents only and not a forwarding address for the purposes of s. 38(1) of the Act. Consequently, as

the Landlords have also made a claim for the security deposit, it will be dealt with as a part of their claim.

The Landlords' Claim:

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. The only exception to this rule, is s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given written notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

As stated above, I find that the Landlords' intrusions into the Tenant's and her roommate's suite without notice to them were a breach of their right to private enjoyment. I find that the Tenant asked the Landlords to give her proper notice on March 7, 2012 but that instead the Landlords became angry and verbally abusive to her. As a result of the Landlords actions and refusal to comply with s. 29 of the Act, I find that the Tenant gave the Landlords written notice on March 14, 2012 that she was ending the tenancy. I find that thereafter, the Landlords continued to enter the Tenant's suite without obtaining her or her roommate's consent and without giving proper notice and as a result, I find that the Tenant was entitled to end the tenancy early on March 31, 2012. Consequently, the Landlords' claim for a loss of rental income for the period, April 1 – 21, 2012, is dismissed without leave to reapply.

As a further consequence, I find that the Landlords are not entitled to keep the Tenant's security deposit of \$200.00 and I Order them to return it to the Tenant together with the \$250.00 award of compensation.

Conclusion

The Landlords' application is dismissed in its entirety without leave to reapply. A Monetary Order in the amount of **\$450.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: June 12, 2012.

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Residential Tenancy Branch

