



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPC; OPR; MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession for cause; an Order of Possession for unpaid rent; a Monetary Order for damages to the rental unit, unpaid rent and loss of revenue; to apply the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

Both parties were present and gave affirmed testimony at the Hearing.

It was determined that the Tenants received the Notice of Hearing documents by registered mail sent May 4, 2012.

A large number of documents were provided in evidence by the Landlord, many of which were duplicates of documents already provided by the Landlord and some of which had no relevance to her Application filed May 3, 2012. The Tenants also provided documents in evidence. Only the documents that were relevant to the Landlord's Application and the documents that were duly provided to the other party in accordance with the provisions of the Rules of Procedure and the Act are described in this Decision.

### **Preliminary Matters**

The Landlord has applied for an Order of Possession based on a Notice to End Tenancy dated April 2, 2012, for \$750.00 in unpaid rent (a copy of which was provided in evidence) and an Order of Possession for Cause (a copy of which was not provided in evidence). At the beginning of the Hearing, it was established that the Tenants moved out of the rental unit on or about April 10, 2012, and that the Landlord has taken back possession of the rental unit. Therefore this portion of her application is dismissed as the Landlord no longer requires an Order of Possession.

The Landlord provided late documentary evidence with respect to damages she alleges the Tenants made to the rental unit, and which are not included on her Application for Dispute Resolution filed May 3, 2012. The Landlord did not amend her Application and therefore these additional claims have not been considered in this Decision.

The Hearing continued with respect to the remaining portions of the Landlord's Application filed May 3, 2012.

**Issues to be Decided**

- Is the Landlord entitled to a monetary award for damages, unpaid rent and loss of revenue?

**Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 25, 2011. The tenancy agreement is a one year lease, ending June 30, 2012. Monthly rent was \$1,525.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$775.00 on May 30, 2011. The Landlord is still holding the security deposit.

**The Landlord gave the following testimony:**

The Landlord testified that the Tenants paid only half a month's rent for the month of April, 2012, and that they stated she should keep the security deposit in lieu of payment of the amount owing for April, 2012.

The Landlord seeks a monetary award for loss of income for the month of May, in the amount of \$1,525.00.

The Landlord testified that the Tenants did not shampoo the carpets at the end of the tenancy; that they broke the garburator, shower faucet, and the bathtub tap control. The Landlord seeks to recover the cost of shampooing the carpets in the amount of \$120.00; the cost of repairing the shower faucet and tap control in the total amount of \$294.07 (\$234.07 for parts and \$60.00 for labour); and the cost of repairing the garburator in the amount of \$80.00. The Landlord also seeks to recover \$22.26 from the cost of serving the Tenants by registered mail. The Landlord provided copies of receipts in evidence.

The Landlord stated that she purchased the rental unit in May, 2011, and that she did not know how old the garburator was. She stated that the move-in Condition Inspection Report does indicate that the garburator, bathtub tap control and shower faucet were all in working condition at the beginning of the tenancy. She believes the female Tenant broke the shower faucet and bathtub tap control by hanging on to the shower faucet to support herself while cleaning and by using too much force to turn on the bathtub tap.

**The Tenant gave the following testimony:**

The Tenant testified that matters had become strained between the parties because the Landlord refused to fix the shower faucet or the bathtub tap control. The Tenant stated that she was scrubbing the inside of the bathtub and shower surround at the beginning of the tenancy and the shower faucet fell off the wall, missing her by inches. She stated that she did not break the faucet and that she believes it was a pre-existing defect. The Tenant testified that the shower faucet had a plastic retractable shower head and that there was no fitting where the shower attached to the head. The Tenant testified that there was a broken part inside the bathtub tap control. The Tenant stated that the Tenants are in their 80s and do not have the strength to break the faucet or the bathtub control tap, as alleged by the Landlord.

The Tenant submitted that the parties did not check every detail of the rental unit (including whether or not the garburator worked, or whether the shower faucet and bathtub tap control were sound) at the move-in condition inspection. She submitted that the rental property was 17 years old and that it was reasonable to expect that the damages were caused by normal wear and tear.

The Tenant stated that the Landlord gave them a letter indicating that the Tenants could end the tenancy if they gave the Landlord one month's notice in writing. A copy of the letter was provided in evidence. The Tenant testified that they gave the Landlord one month's notice with the understanding that they could end the tenancy by doing so. The Tenant stated that they gave their notice in writing before the end of March, by mail, and that she knows the Landlord received it before the end of the month. The Tenants provided a copy of their written notice in evidence.

The Tenant stated that they did not use the garburator during the tenancy. She testified that she did not professionally shampoo the carpet at the end of the tenancy because they were not professionally cleaned at the beginning of the tenancy.

The Landlord gave the following reply:

The Landlord denied receiving the Tenants' written notice to end the tenancy by the end of March, 2012.

The Landlord testified that there was a fire in the rental property in 2009 and that the rental unit was remediated after the fire. She stated that everything was inspected after the remediation and deemed to be safe and in good working order and that the rental unit got new counters and carpets.

**Analysis**

The Tenants submit that the Landlord gave them written permission that they could end the tenancy on one month's notice. The Tenants' written notice is dated March 29, 2012. The Tenants were not sure when they mailed the notice, but even if they had mailed it on the same day it was written, the Act deems service to be effected 5 days later. In other words, the Landlord was not deemed to have been served with the notice to end the tenancy before the end of March, 2012, and the Landlord denied receiving the notice before the end of March, 2012.

The Tenants did not pay full rent on April 1, 2012, and the Landlord issued a Notice to End Tenancy for Unpaid Rent. Section 21 of the Act prohibits tenants from applying a security deposit towards rent without the written consent of the landlord.

The Tenants have not filed an Application for Dispute Resolution with respect to any claim for damages they may feel they have. This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 26 of the Act requires a tenant to pay rent when it is due. Section 45 of the Act provides for how a tenant can end a tenancy.

Based on the testimony and documentary evidence provided, I find that the Tenants did not comply with Sections 26 or 45 of the Act. The Landlord provided copies of ads placed to re-rent the rental unit and I find that the Landlord took reasonable steps to mitigate her loss of income. I find that the Tenants owe rent in the amount of **\$775.00** to the Landlord for April, 2012, and that the Tenants' breach of the Act resulted in loss of income to the Landlord for the month of May, 2012, in the amount of **\$1,525.00**.

The tenancy agreement includes a hand-written notation that the carpets should be professionally steam cleaned when the tenancy ends. There are no initials beside this hand-written notation. The Tenants allege that the carpets were not professionally

cleaned before they moved in. Residential Tenancy Policy Guideline 1 provides that a tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year; if the Tenant deliberately or carelessly stained the carpet; or at the end of a tenancy, regardless of the length, if the tenant had un-caged pets or smoked in the premises. In this case, the Tenants resided in the rental unit for less than a year and there was no evidence that the Tenants had un-caged animals; had deliberately or carelessly stained the carpet; or smoked in the rental unit. Therefore the Landlord's claim for the cost of shampooing the carpet is dismissed.

I find that the Landlord provided insufficient evidence that the Tenants damaged the shower faucet, bathtub tap control or garburator. The Landlord did not know the age of the garburator or the bathroom fixtures, but did not dispute that the rental unit was 17 years old. The Landlord provided no evidence that the bathroom fixtures were replaced as a result of a fire in 2009. Therefore I find it probable that these items were at the end of their useful life and that damages were a result of normal wear and tear. The remainder of the Landlord's claim for damages is dismissed.

There is no provision in the Act for a party to recover the cost of registered mail. Therefore this portion of the Landlord's claim is dismissed.

The Landlord has been partially successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

Further to the provisions of Section 72(2)(b) of the Act, I order that the Landlord may apply the security deposit towards partial satisfaction of her monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlord a Monetary order, calculated as follows:

Unpaid rent for April, 2012	\$775.00
Loss of revenue for May, 2012	\$1,525.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,350.00
Less security deposit	<u>- \$775.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,575.00</b>

### **Conclusion**

I hereby provide the Landlord a Monetary Order in the amount of **\$1,575.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 04, 2012.

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Residential Tenancy Branch