



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDC

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking cancellation of a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent and a monetary order for money owed or compensation for damage or loss.

The parties and the landlords' attorney appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process. The parties each acknowledged receipt of the other's evidence and no issues were raised about the service of evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

**Preliminary Issue-**The tenants said that they now have vacated the rental unit as of June 30, 2012, pursuant to the Notices to end the tenancy, and were no longer seeking a cancellation of the Notices. As a result, I have amended the tenants' application, excluding those requests.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order?

### Background and Evidence

Two tenancy agreements were entered into evidence, although one copy of a tenancy agreement was faded. I heard testimony that this tenancy began May 4, 2012 for a one year fixed term pursuant to the first tenancy agreement. I also heard testimony that the parties executed a new tenancy agreement, with an effective start date of June 1, 2012, but on a month to month basis.

Monthly rent was \$750.00 and the parties disputed whether the tenants paid a security deposit. The tenants claimed they paid \$300.00 and the landlord said he never received it.

The tenants contended that they vacated the rental unit on June 30, 2012.

The tenants have filed a monetary claim of \$25,000.00, as follows:

Refund of all funds paid to landlord	\$1700.00
Electricity and hook up charges	\$658.00
Moving expenses	\$2780.00
Storage fees	\$620.40
Damages due to stress, cancer treatment	\$13,641.60
<b>Total</b>	<b>\$25,000.00</b>

In support of their application, the tenants' relevant evidence included the faded copy of the second tenancy agreement, the first tenancy agreement, and faded receipts of payments made to the landlord.

**Tenant's testimony in support of their monetary claim:**

*Refund of funds paid to the landlord*-The tenants contended that the landlord breached the 1<sup>st</sup> one year, fixed term tenancy agreement by giving the tenants notice of his intent to sell the residential property, which resulted in the execution of the 2<sup>nd</sup> tenancy agreement. When questioned, the tenants admitted that they willingly signed the 2<sup>nd</sup> tenancy agreement, not under duress.

In response, the landlord contended that the 2<sup>nd</sup> tenancy agreement just replaced the 1<sup>st</sup> tenancy agreement and was signed willingly.

*3 year contract with the phone company*-The tenants signed a three year contract with a phone company, and due to the landlord seeking an early end to the tenancy, they will not be able to fulfill the terms of the 3 years.

When questioned, the tenants could not explain why they did not transfer the service to their new residence. Additionally, the tenants acknowledged not having presented a receipt, evidence of payment or proof that they had signed for the service.

In response, the landlord questioned why the tenants signed for a three year service when the tenancy was to last for a year.

*Electricity and hook up charges*-The tenants said that the landlord was to provide for electricity as per the terms of the tenancy agreement, but that the tenants have had to incur costs of a hook up charge and for the service. The tenants said they had not received a bill as of yet, but said that the hook up charges were \$364.00.

In response, the landlord contended that they were not responsible for electricity for the tenants.

A discussion ensued after reviewing the two tenancy agreements, and it was pointed out to the landlords that they marked the box on the tenancy agreement which provided that the electricity was included with rent. The landlords said that this box was marked in error, as shown by the lack of a mark on the first tenancy agreement.

*Moving expenses; storage fees*-The tenants contend that the actions of the landlord caused them to move early, which resulted in moving expenses and storage fees, due to the necessity of moving on a short notice. When questioned the tenants confirmed not having provided proof of payment of the claimed expenses.

In response, the landlord contended the tenants' own actions caused the tenancy to end, more specifically the tenants failed to pay the full rent for June 2012.

*Damages due to stress, cancer treatment*-The tenants contended that they suffered a great amount of stress due to the actions of the landlord. Additionally the male tenant said he is undergoing cancer treatments.

When questioned as to how the tenants arrived at the sum claimed, the tenant replied that this amount was the balance left after the other sums requested which would be the limit allowed under the Act.

In response, the landlord contended that the tenants' claim was not quantifiable.

I note that the landlords also presented a monetary claim of \$350.00.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant, the tenants in this case, cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That there was damage or loss by the claiming party;
2. That the alleged damage or loss was due to the respondent's breach of the tenancy agreement or the Act or from negligence;
3. Verification or proof of the loss; and,
4. That the claimant took all reasonable steps to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

*Refund of funds paid to the landlord*-I find the tenants submitted insufficient evidence of an entitlement to be returned all the funds paid to the landlords. Additionally I find the tenants failed to present any reason why they should be awarded this amount, such as a claim that the landlords violated the Act or were negligent. I therefore dismiss their monetary claim for \$1700.00, without leave to reapply.

*3 year contract with the phone company*-I find the tenants made a choice of agreeing to a three year contract and that the landlords are not responsible for choices made by the tenants. I also was given no reason by the tenants why the service could not be transferred to their new residence and no verification. I therefore dismiss their monetary claim for \$5600.00, without leave to reapply.

*Electricity and hook up charges*-Although the landlords believed that the tenants were responsible for their own electricity, the latest tenancy agreement showed that the electricity was included with rent. The landlords accepted that they were responsible for the same, even though the box was marked in error, according to the landlords.

Further, the tenants failed to submit proof of payment as they have not received a bill, but I accept that the hook-up charge was \$364.00 as stated by the tenants.

I therefore find that the tenants have established a monetary claim of \$364.00 for the hook-up charge. I also grant the tenants leave to reapply for any remaining electricity charges incurred by them for the rental unit from June 1, 2012 when the new tenancy agreement took effect, through June 30, 2012, when the tenancy ended.

*Moving expenses; storage fees*-The tenants failed to present evidence that they had suffered a loss, such as through a receipt or cancelled cheque, which is step 4 of their burden of proof. I therefore dismiss their monetary claim for \$2780.00 and \$620.40, without leave to reapply.

*Damages due to stress, cancer treatment*- I find the tenants submitted insufficient evidence that the landlords' actions caused them to suffer stress, anxiety, or hindered the tenant's cancer treatment, which was detrimental to their mental or physical health. I was not provided medical records or any other records which documented the tenants' claim or if so, that the landlords were responsible for the stress.

Additionally Residential Tenancy Branch Policy Guideline section 16, suggests this to be a claim in tort, which is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim rises to that requirement.

I therefore dismiss the tenants' claim for \$13,641.60, without leave to reapply.

Conclusion

Due to the above reasons, I find the tenants have established a monetary claim for \$364.00 for electric hook up charges.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$364.00, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount forthwith, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

I have not addressed the landlords' monetary claim as there was no application for dispute resolution from the landlords for me to consider.

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: July 27, 2012.

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Residential Tenancy Branch