



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC, OPB, MNDC / DRI, LAT

### Introduction

This hearing was scheduled in response to 2 applications: i) by the landlords for an order of possession / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement; ii) by the tenants to dispute an additional rent increase / and permission to change the locks to the rental unit.

Both parties participated in the hearing and gave affirmed testimony.

As the tenants have now vacated the unit, the landlords withdrew the application for an order of possession, and the tenants withdrew both aspects of their application. The matter remaining before me, therefore, concerns the landlords' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement.

### Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from July 1, 2012 to July 1, 2013. Monthly rent of \$1,350.00 is due and payable in advance on the first day of each month, and a security deposit of \$675.00 was collected.

The landlords issued a 1 month notice to end tenancy for cause dated August 1, 2012. While the tenants subsequently filed an application for dispute resolution on August 2, 2012, they did not specifically apply to dispute the 1 month notice. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is September 1, 2012. Reasons shown on the notice for its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Tenant has assigned or sublet the rental unit without landlord's written consent

Issuance of the notice arises out of the tenants' introduction of 2 additional tenants to the unit. The 2 new tenants are adults with special needs who will be cared for by the tenants. The landlords identified a concern about the implications this unauthorized alteration to the tenancy agreement may have for their insurance coverage, and were of the view that the unit would sustain additional wear and tear as a result of an increase in the number of tenants. The landlords had proposed that a rent increase of \$250.00 to \$1,600.00 per month may assist in part to remedy the dispute. During the hearing the tenants confirmed that they vacated the unit by August 31, 2012. The tenants have not provided the landlords with a forwarding address and the tenants declined to provide their new address at the hearing.

The landlord testified that advertising for new renters has commenced but, at this early stage in the month of September, no new renters have yet been found.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 7 of the Act addresses the **Liability for not complying with this Act or a tenancy agreement**, as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 47 of the Act speaks to **Landlord's notice: cause**. Further, Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent, and provides in part:

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises is sufficient notice*.

Based on the documentary evidence and testimony of the parties I find that the parties entered into a fixed term tenancy for the period from July 1, 2012 to July 1, 2013. I also find that after the landlords' service of a 1 month notice to end tenancy for cause dated August 1, 2012, the tenants vacated the unit effective August 31, 2012. Further, I find that the landlords served the tenants with 2 applications for dispute resolution, which included a claim for loss of rental income, during the time while the tenants still had possession of the rental unit. Despite advertising, no new renters have yet been found for the unit. Following from all of the foregoing, I find that the landlords have established entitlement to loss of rental income for the month of September 2012.

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**, and provides in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In summary, I find that the landlords have established entitlement to loss of rental income for the month of September in the amount of \$1,350.00. I order that the landlords retain the security deposit of \$675.00, and I grant the landlords a monetary order for the balance owed of \$675.00 (\$1,350.00 - \$675.00). I find that an application for loss of rental income effective after September 30, 2012 is premature at this time.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$675.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court 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: September 04, 2012.

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Residential Tenancy Branch