



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – CNR, MNDC, MNSD, FF

For the landlord – OPR, MND, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants have applied to cancel a Notice to End Tenancy however this was withdrawn at the outset of the hearing as the tenants have vacated the rental unit. The tenants have also applied to recover their security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the landlord and the landlord's agent attended the conference call hearing gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. As the landlords application and evidence had not been provided to the Arbitrator prior to this hearing the hearing was adjourned and reconvened at this date to allow the landlord opportunity to present evidence and for the tenants to respond. All evidence and testimony of the parties has been reviewed and are considered in this decision. The tenants were allowed to provide additional documentary evidence to the Arbitrator and the landlord after the hearing concluded.

As the tenants are no longer residing in the rental unit, I have not dealt with the landlord's application for an Order of Possession and this section of the landlords claim is dismissed.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

Both parties agree that this tenancy started on February 15, 2012 for a fixed term due to expire on February 15, 2013. Rent for this property was \$3,030.00 a month with an additional \$30.00 per month for security. A security deposit of \$1,500.00 was paid at the end of January, 2012. The parties agree that they were in attendance at the start of the tenancy for the move in condition inspection but at the end of the tenancy the inspection was conducted in the tenants' absence. The tenants gave the landlord their forwarding address in writing on either September 27 or 28, 2012. The tenants vacated the rental unit on September 27, 2012.

**The tenants claim**

The tenants testify that they were forced to move from the rental unit due to infestation of rodents namely bats, squirrels and birds. The tenant testifies that the toxins from the bats urine and guano made both the female tenant and their youngest child sick with respiratory illness. The tenants testify that as they could no longer live in the rental property they had to rent a trailer and live in that on the property. The tenants' testify that the landlord's agent agreed they could end the tenancy as soon as they found alternative accommodation.

The tenants testify that they obtained quotes from moving companies to show it would have cost the tenants \$5,000.00 to move from the property. The tenants testify that they moved

their belongings into the garage which took a lot of time and energy and help from others and as they could not get into their new home immediately they were able to phase their move into the new home by doing the work themselves. The tenants seek to recover \$5,000.00 in compensation for this work. The tenants have not provided copies of any quotes from moving companies in documentary evidence.

The tenant JS testifies that she and her child had to go to a naturopathic doctor to seek medical care and medication resulting from the respiratory illness. These symptoms were first experienced at the end of May, 2012 and the tenant thought at first they had a bad cold. As this did not get better after two weeks they sought medical care on June 18, 2012. The tenants seek to recover the cost for this care and have provided copies of the invoices in documentary evidence. There are three invoices to a total sum of \$871.52. The tenant states they had claimed \$900.00 for this care and amend their claim to \$871.52. The tenant testifies that her medical insurance did not cover the costs for these invoices.

The tenants testify that bats create a substance called Fusarium spores which creates the toxicity which causes health problems in humans. Humans should not cohabitate with bats due to this and the tenants could not live in this home due to the close proximity of the bats. The tenants testify that the landlord's agent told them to pitch a tent and stay in that.

The tenants testify that the landlord had an air quality test done to test for mould spores. The landlord would not give the tenants a copy of that test unless the tenants paid \$800.00 for it. The tenant testifies that the landlord has provided a copy of the test report which shows they found high exterior readings. They tenants testify that the readings are compared between the exterior air quality and the interior air quality. If there are higher readings outside this would affect the interior readings. The tenants' testify that the Residential Tenancy information states if you present health issues you should not live in the property. Once the tenants moved out of the home all the symptoms they exhibited ended.

The tenants testify that they had to rent a motor home to live in as they could not find a hotel to stay in for the summer and the motor home was cheaper for the family of six at

\$100.00 per day from August 09 to September 27, 2012. The tenants seek to recover the sum of \$6,000.00 for the rental of the Motor home. The tenants have provided duplicate cheques and invoice showing a security deposit was paid of \$800.00 this was returned to the tenants when the motor home was returned in good condition and duplicate cheques and invoices to the sum of \$5,300.00 to rent the motor home. The tenants have also provided a flight itinerary for one of the tenants to fly to collect the motor home from Edmonton.

The tenants testify that when they rented this home they expected to live in it and enjoy it as a family home for the duration of their tenancy. As this was not possible due to the bats the tenants seek to recover compensation equivalent to the rent for July, August and September to the sum of \$9,000.00 for the pain and suffering caused.

The tenants seek to have the security deposit returned to the sum of \$1,500.00 as the landlord did not return it at the end of the tenancy. The tenants also seek to recover their \$100.00 filing fee from the landlord.

The landlord disputes the tenants claim. The landlord testifies that the tenants have exaggerated the amount of bats in the property and the whole property was not affected by bats. The landlord agrees there was a bat colony but claims the bats were only able to enter the property in the space in the porch above the deck. The landlord testifies that the tenants' photographic evidence does not show bat guano or bat urine in the wood on the deck but rather is normal seasoning from the weather.

The landlord testifies that when the tenants first notified them of an issue with bats the landlord arranged on July 31, 2012 to have an air quality test carried out by a professional company which cost over \$800.00. The landlord's agent testifies that he suggested to the tenants that it might be fun to pitch a tent outside with their children until the test results came in as a precaution if they had concerns. The landlord testifies that the results were processed by a laboratory. The landlord testifies that although the air quality tests were carried out for mould spores, any other spores present such as from *Fusarium* would also show up. The landlord testifies that the other disease the tenants were worried about,

Histoplasmosis is not a recognised disease in British Columbia and there have been zero incidents recorded. There are no solid samples of bat guano and all testing fell within an acceptable amount of deviation within the average range. While the report states there was elevated indication of Fusarium present in the living room this still fell within the acceptable range.

The landlord's agent testifies that he tried to get a restoration company in earlier to get air quality tests done sooner but due to the time of year this was the restoration companies' busiest time and it was not possible. The landlord testifies that the air quality test results show that the rooms passed the air quality test. If any rooms had failed the test the landlord states they would have taken further action. The test was done on August 03, 2012 and the results came back on August 09, 2012. The landlord's agent called the tenants and told the tenants it was safe for them to live in the house.

The landlord testifies that they could not take any steps to remove the bats as they are protected species and they have to wait for the bats and the bat pups to leave the property to hibernate elsewhere and then seal up the holes to prevent their return. The landlord has provided documentary evidence to this effect.

The landlord disputes the tenants claim for medical bills. The landlord testifies that he is a physician and if the tenant has toxins in their lungs they should have gone to a doctor and the hospital for treatment or sputum test to show a fungal infection. The landlord testifies that the tenants could have had allergies to bats but this is unknown.

The landlord disputes the tenants claim for the cost to rent the motor home and testifies that the tenants have not provided a final invoice to the landlord and had told the landlord they were going to get a trailer from a friend in Alberta. The landlord's agent testifies that he went to the unit on four separate occasions and knocked on the door when the tenants were claiming to live in the trailer. Each time the tenants opened the door and were in the rental unit. The landlord testifies that there was also a perfect basement for the tenants to live in, in the property instead of renting a trailer. If the tenants were so worried about the air quality in the property why were they in the property at all?

The landlord disputes the tenants claim for Septembers rent. The landlord testifies that the tenants never paid rent for September.

The landlord seeks to keep the tenants security deposit. The landlord agree that they have not filed a claim to keep all or part of the security deposit but state the tenants knew the landlord was keeping it for some damage and cleaning.

The landlord testifies that they had many conversations with the male tenant about the air testing. The landlord states they did there due diligence and investigated the tenants concerns and when they asked the tenants if there were any more issues in the home the tenants said none.

The tenants argue that their photographic evidence clearly shows bat guano present and state the pest control man also agreed it was bat guano. The tenants also refer to their photographic evidence of the wooden deck and state that the staining shown on the underneath of the deck is bat urine. The tenant argues that her naturopathic doctor is also a medical doctor who was written to confirm the tenants and her child's respiratory symptoms are ones she has never seen before and the doctor strongly feels that the environmental toxicity was contributing to the tenants and her children's symptoms as they became chronic despite treatments. The doctor goes on to say that she advised the tenant and her children be removed from any hazardous or toxic exposures as soon as possible in order for their health to recover. The tenants have provided a letter from this doctor in documentary evidence.

The tenants dispute that they continued to live in the home while they had their trailer. The tenants' testify that they had to go into the home to cook and wash and to pack up their home but they used the trailer to sleep in. The tenant argues that the landlord's agent said he would hold the rent for August until they got a resolution to the rodent problem. The tenant states they did cancel the rent cheque for August as the landlord would not talk to them and would not provide a copy of the air quality test.

### **The landlords claim**

The landlord testifies that at the end of the tenancy they did a move out condition inspection of the property in the tenants' absence because the tenants did not show up for the inspection. During that inspection the landlord's agent found damage to the frame of a bi-fold door. This has not yet been repaired but the landlord estimates the cost of the repair to be \$70.00. The landlord has provided a photograph of the bi-fold door.

The landlord's agent testifies that the tenants failed to leave the carpets in the rec room and one basement bedroom clean. These carpets were left stained as shown in the landlord's photographic evidence. The landlord testifies the carpets had been new at the start of the tenancy and the only people to use the home were the landlord's family for odd weekends. The landlord estimates a cost of \$80.00 to have these carpets cleaned.

The landlord's agent testifies that tenants failed to leave the rental unit in a clean condition at the end of the tenancy. The landlord estimates it will take six hours to clean the fridge and stove, three sets of French doors, clean two shower stalls and do some dusting. The landlord seeks to recover \$25.00 per hour to the sum of \$150.00.

The landlord testifies that the tenants have not paid all the final water bills for the property. The landlord agrees they may not have sent the tenants a copy of these bills with a demand for payment within 30 days but states the tenants have now received the bills with the landlord's evidence package and would know they are responsible for these bills. The landlord has calculated the tenants' share of the bills to be \$31.17; \$84.43 and \$81.01 to a total sum of \$196.61.

The landlord seeks to recover rent for August and September, 2012 as the tenants continued to reside in the rental unit. The landlord seeks a Monetary Order for \$6,000.00.

The landlord testifies that the tenants had use of the dock for their boat. The tenants agreed on the tenancy agreement to be responsible for any repairs to the dock. The tenants caused damage to the dock which cost the landlord \$2,105.60 to repair. The landlord testifies that the tenants boat was too high for the dock which resulted in the boat not fully lifting out of

the water causing stress fractures on the wishbone by the boat continually being lifted out of the water by the waves. The landlord testifies that as they did not know at first if the damage was caused through the tenants' actions or neglect they agreed to pay half of the cost for the dock repair and the tenants agreed to pay the other half. However the tenants did not pay and the landlords later determined the dock was damaged by the tenants' actions and neglect. The landlord testifies the dock lift was about 20 years old but had been used by the previous tenant and the landlord had had a gear lift repair done on the boat lift in May, 2012.

The tenant disputes the landlord's claims the tenant testifies that the landlord did not give the tenant any opportunity to attend a move out inspection of the house at the end of the tenancy and therefore they dispute the damage documented on the move out inspection report. The tenant testifies that they deny any damage was caused during their tenancy to the bi-fold doors and they deny that the carpets were left stained. The tenant testifies that the carpet had not been clean when they moved into the property and the landlord's agent would not remove his shoes when he walked around the house. The tenant testifies that she did scrub some marks on the stair carpets but the carpets were all spotless when she left the house.

The tenant disputes the landlords claim for cleaning costs. The tenant testifies that the home was thoroughly cleaned and was left in a better condition then it was in when they moved in. The tenant testifies that the showers and the upper portion of the house are 30 years old and they were cleaned as best as they could be considering the age of the property.

The tenants do not dispute the landlords claim for the water bills.

The tenants dispute the landlords claim for the dock repair. The tenant testifies that they did agree to pay half the bill when the landlord's agent first called them however the landlord's agent never provided a copy of the bill to the tenants. The tenant testifies that the repair man told the tenants that the lift was rusted out and was failing due to its age. The tenants have provided photographic evidence of the rust on the boat lift. The tenants dispute that



the last tenants used the dock as the neighbours told them that it had not been used for the last seven years. The tenants testify that they do not accept responsibility for the damage but did agree to pay half because they wanted to use the dock. The tenant disputes the landlords claim that their boat was too high for the lift resulting in the boat not lifting high enough out of the water. The tenant testifies that their boat has a wake board tower which was folded down when the boat was put on the lift. The tenant testifies that they did not damage the lift through their actions or neglect.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for both parties' claims for damage or loss to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

### **The tenants claim**

The tenants claim they had to move from the rental unit because of the rodent problem namely the bats which were making the tenants ill. The tenants have put forward an argument that bat urine and guano is toxic and humans should not share the same space as bats due to this. I accept that the property did have bats in residence and I am satisfied that the tenants suffered health problems however without further testing the letter from the tenants doctor is not definitive proof that the tenants health conditions were solely caused by exposure to bat guano or bat urine and not due to another source or previous health condition.

I further find With regard to the tenants claim for medical costs of \$871.52; under section 7 of the *Act* a tenant is required to mitigate or minimize their loss. Had the tenants gone to a doctor covered under British Columbia Health the tenants would not have had to pay such high costs and potentially only had to pay for any prescribed medication. As it was the tenants' choice to use a naturopathic doctor in private practice then the tenants would have to expect to pay for this service and cannot claim this back from the landlord. Consequently this section of the tenants claim is dismissed.

The landlord has presented documentary evidence showing the air quality test for mould in the building was passed. I do not find that the photographs provided by the tenants give a true representation that the staining on the underside of the deck is bat urine to the extent shown as this could also be explained by weather conditions on the wooden deck over the life of the deck. It is therefore my decision the landlord did take timely action to investigate the tenants concerns and arrange an air quality test to alleviate these concerns. The landlord was unable to take any further action to prevent the bats living in the porch area above the deck as the bats are a protected species in this locality and the landlord was unable to prevent the bats from returning to the rental property by local laws and legislation. There is no evidence from the tenants to show that the landlord has not complied with s. 32 of the *Act* as the test results show the home was fit for occupation and it was therefore the tenants' choice to move from the rental unit.

With regards to the tenants claim for compensation for pain and suffering; I find the landlord did act with due diligence and had the air quality in and around the unit tested. The test results show that the air quality passed and the home was fit for human occupation. The landlords hands were tied by current laws and legislation which protects the bats and their habitats. This resulted in the landlord not being able to affect a permanent solution to prevent the bats returning to the home until after the tenants choose to move out and the bats had gone elsewhere to hibernate. Consequently, this section of the tenants claim is dismissed.

With regard to the tenants claim for the sum of \$6,000.00 for the hire of the motor home; the tenants claim they hired this motor home from August 09, 2012 to September 27, 2012 at \$100.00 per day. I have calculated this time frame to be 49 days and not 60 days therefore there is an error in the tenants' calculation and 49 days at \$100.00 per day is \$4,900.00. I further find from the tenants evidence that they paid \$5,300.00 not \$6,100.00 as claimed as \$800.00 was returned to the tenants. Therefore the tenants' calculations do not provided an accurate record of either the days or the amount they rented the motor home for. I have also found that the landlord was not negligent in dealing with the problem of the bats and the landlord could not do anymore due to current laws. I further find the tenants were continuing to use the rental property for cooking, washing and packing their belongings' and used the trailer to sleep in. The landlord argues that if the tenants had such extreme concerns for their health they would not have entered the rental unit especially to prepare food and to pack belongings if their health was so badly affected by toxins from the bats. I find this argument to have some merit. If the tenants did not use the basement level of the home but continued to access the home particularly to cook and pack their belongings then I also question the tenants concerns regarding their health. This section of the tenants claim is therefore dismissed.

In the matter of compensation for \$5,000.00 to move; the tenants state they based this figure on quotes from moving companies; however the tenants have failed to provide copies of these quotes in evidence. Furthermore I find the amount claimed to be extravagant to move a family of six people to alternative accomidation and I find the tenants have not met the burden of proof to show how much a moving company would have charged or that the

landlord is responsible for the tenants moving costs as the tenants choice to move out even after being informed that the home had passed the test and was fit for occupation. Therefore this section of the tenants claim is dismissed.

With regards to the tenants claim for the return of the security deposit; The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on September 27, 2012 and the landlord had a forwarding address in writing by September 28, 2012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenants have not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenants to the sum of **\$3,000.00** pursuant to s. 38(6)(b) of the *Act*.

### **The landlords claim**

With regard to the landlords claim for unpaid rent for August and September, 2012; the tenants agree that they stopped the rent cheque for August and failed to pay rent for September. While a tenant still has possession of a rental unit the tenant is required to pay rent for that unit on the day it is due whether or not the tenants feel the landlord has complied with the *Act*, regulations or tenancy agreement. The tenants' recourse at that time would have been to file an application for Dispute Resolution and not to just stop payment of rent. Consequently I uphold the landlords claim for unpaid rent for these months to the sum of **\$6,000.00**.

With regard to the landlords claim for damages and cleaning in the unit namely the bi-fold door frame, the carpet cleaning and general cleaning. The landlord has estimated the cost for the door repair to be \$70.00, the carpet cleaning to \$80.00 and general cleaning to be \$150.00. However, the landlord has provided no quotes or estimates from a person or company contracted to do this work and therefore does not meet the test for damages regarding the proof required for the actual cost of the repair or cleaning. Consequently, this section of the landlords claim is dismissed.

With regard to the landlords claim for damage to the boat dock and lift; I find the landlord has not met the burden of proof that this damage was caused by the actions or neglect of the tenants. I further find the boat lift was 20 years old and is likely to be past its useful life. The landlord has not shown that the contractor who made the repairs has any proof that the tenants did not put down their wake board tower when the boat was located on the lift and therefore I find this is an assumption on his part. The tenants photographic evidence shows a considerable amount of rust on the boat lift which clearly suggests the boat lift was old and in need of attention. Therefore, the landlord has not met the burden of proof that the tenants are responsible for damage to the boat lift or dock and this section of the landlords claim is dismissed.

The landlord requested that I consider their claim to keep the security deposit. In the absence of a formal and proper application for that issue, I declined to hear that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process especially as the time to make a claim within the 15 allowable days has passed.

With regard to the landlords claim to recover the water bills; A landlord is required to present any utility bills that a tenant is responsible for to the tenants with a written demand for payment. The landlord agrees that they may not have done so prior to forwarding the bills to the tenants in the landlord's evidence. The tenants do not dispute they owe these bills consequently I am prepared to deal with the water bills at this time as the tenants have had sight of them since the landlord served the evidence to the tenants. Therefore the landlord's claim to recover the sum of **\$196.61** is upheld.

As both parties have been partially successful with their claims I find each party must bear the cost of filing their own applications.

The tenants' monetary award will be offset against the landlord's monetary award as follows:

Double the security deposit (Tenants)	\$3,000.00
Unpaid rent (landlord)	\$6,000.00
Unpaid utilities (landlord)	\$196.61
Total amount due to the landlord	\$3,196.61

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,196.61**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY find in partial favor of the tenants claim the tenants are entitled to double the security deposit to the sum of **\$3,000.00**. This sum has been offset against the landlord's monetary claim.

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: November 22, 2012.

---

Residential Tenancy Branch