



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

The landlord seeks a monetary award for compensation for damage and/or loss in the sum of \$1,875.00.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Has the landlord met the burden of proving her claims?

### Background and Evidence

The landlord testified that this tenancy began in November of 2008 and ended on November 30, 2012. Rent was fixed at \$564.00 payable on the first of the month and the tenants paid a \$275.00 security deposit in November 2008.

The landlord testified the tenants gave their notice to end tenancy on September 1, 2012 via email. In their notice the tenants advised that they intended to vacate on September 30, 2012. The landlord testified that the rental unit was in such a poor condition it could not be re-rented and the tenants did not return the keys in a timely fashion.

The landlord submitted that when her caretaker attended the rental unit he found 30 to 40 cats resident in the premises and a stench permeating the residence. The landlord says her caretaker was required to relocate the cats.

The landlord's caretaker JK testified that he attended the rental unit at the end of the tenancy and he found everything was moved out and the house was in "...pretty good shape..." except for the cat smell. JK testified that there was a misunderstanding about the return of the keys and they were actually left under the mat of his own home and he found them there.

JK testified that he was aware that the tenants did make some efforts to have the cats removed. JK testified that the cats were all in good shape, well fed and food was left for them. JK testified that he was eventually able to enlist the help of PAWS, an animal advocacy group to remove the cats. JK testified that "...the PAWS woman..." caught all the cats and took them "...so we didn't have to put down any cats". JK testified that he did not know if the landlord had to pay a cost for this service.

JK testified that he thinks the tenants did shampoo the rugs but he did them again because there was "...really a bad smell..." JK said that he rented a shampooer and he shampooed all the rugs thoroughly at a cost of \$121.00, this included the cost of renting the machines and the cleaning solutions. In addition JK said he spent 6.5 hours at \$15.00 per hour cleaning the house and doing repairs. JK testified that he re-rented the house just last week although he had shown the house to three prospective groups of tenants who all commented that the caretaker would never be able to get the smell out of the house and they walked out. JK described the smell as "...just unreal..." JK went on to say that the main part of the house was in relatively good shape. JK testified that the door frame in the washroom was removed to remove a washer and dryer and not reinstalled. JK said there was some misunderstanding about when the washer and dryer had to be moved out and he was able to make the repairs. JK testified he had to do work on the outside of the house to repair all the cat holes. At one point he went under the house and the stench was so severe under the house that it was lucky he had attended with a friend who "...almost had to call 911 to get me out of there..."

The landlord asked JK to talk about painting one of the rooms. JK responded that when he first saw the room he thought there was mould on the walls and he washed it off. When he went under the building he later discovered that the plastic that covers the moisture barrier had been all ripped out by the cats and all the insulation was hanging down. JK stated that the plastic will have to be replaced. JK testified that repainted the wall, resealed it and he watched to see if mould would form. JK says it's been 2 months now and there has been no mould. JK surmises that the mould was caused because there was no heat in this room.

The landlord interjected that the wall had to be repainted because it was covered with cat urine.

The tenants submit that the problems in the house were due to a damaged moisture barrier likely damaged by all the cats. The tenants submitted that Clinton is a small town with about 200 feral cats. The tenants say they reported the matter of the cats around the rental unit to the landlord many times and to animal authorities but nothing was done. The tenants submitted that the cats "...were under our shed and under our

house..." the tenant submits that they were never allowed in the house because the tenants had 2 dogs. The tenant says many wild cats were living in and about the house behind them where a lady named Annie was feeding them until Annie got too ill and the cats began migrating to the tenants' home. The tenant agrees that she did feed the cats but says the landlord was aware she was doing so. The tenant commented that she could not see any animal starve to death and that is why she was feeding them but at the start there were only about 12 cats. The tenant says she built a shelter for the cats hoping that the cats would not come under the house but this did not prevent them from doing so. The tenant says she repeatedly contacted the SPCA in Clinton and in 100 Mile House but they would not help. The tenant says she attempted to get obtain their help for over a year without success.

The tenant says she did not want the cats around and although they were never allowed inside the house because of her dogs but that there were holes all around the building and the cats could gain access. The tenants say the entire building was in a poor state of repair. The tenants submitted that there was always mould in the house and a musty smell. The tenants say the cat smell came up from underneath the house and from the duct work that had fallen off. The tenants say the house was very old as were the rugs.

The tenant says after they moved out she was in contact with the previous owner and she did explain there was an issue with a flood in the house due to burst flooding so there could be a smell issue there.

The tenant says she gave notice via email August 31, 2012 because that is the only way the tenants were able to communicate with the landlord. The tenant says the landlord did not live in the area and they had no idea where she lived because they had several different addresses for the landlord: one address in Surrey, one in Port Alberni and another in Saskatchewan. The tenants say that when they vacated on September 24, 2012 they put the key under JK's mat as pre-arranged. The tenants admit they did not call JK to confirm that the key had been placed under his door mat because JK did not have a phone.

The landlord submitted that while she is aware of the need for Condition Inspection Reports she did not prepare them because she thought the tenants were trustworthy. The landlord says the house was fully renovated before it was rented out.

The landlord submits that she is claiming 2 months loss of revenue, 2 months heating and electrical costs and the cost of repairs.

### Analysis

With respect to the notice to end tenancy I will accept that the tenants gave notice via email on August 31, 2012. I accept this based on the undisputed evidence that given that the tenants were supplied with three different addresses for the landlord and they could not determine which address to mail their notice to. Further, I accept the undisputed evidence that all communications between the tenants and the landlord took place via email and I find it is therefore reasonable that the tenants chose this method of providing their notice to end this tenancy.

With respect to the condition of the rental unit at move-out, the landlord did not prepare Condition Inspection Reports. While she says she did not do so because she thought the tenants were trustworthy, this is not the point of Condition Inspection Reports. The point is to be able to compare the condition of the rental unit at move-in and move out and Residential Tenancy law requires landlords to prepare reports at move-in and move-out.

With respect to the condition of the rental unit at move out, the evidence of the landlord's caretaker is that the house was in "...pretty good shape..." except for the smell of the cats. The caretaker testified that he believed it was likely that the tenants did clean the rugs but, given the extent of the cat problem, further cleaning was required. Further, that the damage to the moisture barrier on the house was likely caused by cats living under the house. The tenants have submitted evidence that there are numerous feral cats in the area and that a number of cats migrated from another home nearby to the rental unit. Although the tenants were feeding the cats which may have exacerbated the problem, the evidence is that the tenants informed the landlord of the problem and there has been insufficient evidence submitted to show that the landlord addressed the problem during this tenancy. There is evidence that the tenants' attempted to address the problem by making numerous attempts to have the authorities remove the cats and that they took steps to try to stop the cats from living under the house by building another structure for the cats to live in. I am satisfied with the testimony of the tenants and the caretaker all of whom I found to be thoughtful, consistent and credible. In the end I find that it is reasonable and probable that the cat problem existed at the start of this tenancy and that the tenants did their best to address the problem during the tenancy without support from the landlord. Further, I find it is reasonable and probable to conclude that much of the damage and stench in the rental unit was caused by the cats.

Conclusion

In the end it is the landlord who bears the burden of proving her claims and I find that she has failed to show that the tenants should be held responsible for the damages claimed. The landlord's application is therefore dismissed.

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: January 31, 2013

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Residential Tenancy Branch

