



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, FF**

### **Introduction**

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and damage to the unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting return of double the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

The parties confirmed receipt of the other's applications.

### **Preliminary Matters**

The tenant's confirmed that their 10 page evidence submission was not given to the landlord; therefore that evidence was set aside and the tenant's were at liberty to supply oral submissions.

The tenants have vacated the rental unit; therefore the landlord does not require an Order of possession.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary Order for unpaid rent and damage to the unit?

May the landlord retain the deposit paid by the tenants?

Are the tenants entitled to return of double the deposit?

Are the tenants entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on April 1 2012, rent was \$1,250.00 per month and a deposit in the sum of \$625.00 was paid.

The landlord said she could not be sure that a move-in condition inspection report was completed. At the end of the tenancy an informal walk-through was completed; an inspection report was not signed.

The landlord supplied a copy of a September 29, 2012 letter that directed the tenants to vacate the unit by October 31, 2012. The landlord offered the tenants ½ of October rent in recognition of repairs the tenants had completed.

On September 29, 2012 the tenants had told the landlord they wanted to vacate and that the landlord had said she would relieve the tenants of the need to pay October rent. The tenants did not give written notice ending the tenancy and vacated on October 3, 2012.

Later on September 29, 2012 the landlord gave the tenants a letter that was meant as a notice to end tenancy for cause. The landlord indicated the tenancy should end on October 31, 2012 and that only ½ of October 2012 rent would be due.

A mutual agreement to end the tenancy was not signed by the parties.

The parties agreed that the tenants contacted the landlord on October 26, 2012 and that an informal walk-through of the unit took place on October 28, 2012. The landlord confirmed receipt of the tenant's written address on October 28, 2012 and that the keys were returned on that date; giving the landlord possession of the unit.

The landlord did not supply any evidence in support of the claim for damage to the unit. The application indicated walls had been damaged.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any evidence in support of the claim for damage to the unit I determined that this portion of the application was unverified and that it is dismissed.

Section 45 of the Act requires tenants to end a tenancy by giving written notice at least a full month prior to the end date of the tenancy; this did not occur.

A landlord may not end a tenancy for cause unless a 1 Month Notice to End Tenancy for Cause is issued to the tenants, in accordance with section 47 of the Act. This did not occur.

The tenants confirmed they did not make any rent payment for October, 2012.

In relation to the end of the tenancy I find that neither party complied with the Act; the tenants did not give proper notice and the landlord failed to give the tenants proper notice. There was no dispute that the landlord understood the tenants would vacate; however, the date the tenancy would end was not mutually agreed in writing.

Therefore, I find, pursuant to section 44(f) of the Act that the tenancy ended the date the parties met to walk through the unit; October 28, 2012. The landlord obtained the keys on this date and was given possession of the unit.

In relation to unpaid rent, based upon the landlord's written agreement issued on September 29, 2012; I find that the landlord is entitled to ½ of October rent, from October 1 to 15<sup>th</sup>, in the sum of \$625.00. The balance of October rent is not due, as the landlord waived the requirement for payment.

On November 15, 2012 the landlord applied claiming against the deposit for damage and unpaid rent. As I have found that the tenancy ended on October 28, 2012; I find that the claim against the deposit did not comply with 38(1) of the Act. The landlord was required to submit a claim against the deposit within 15 days of October 28, 2012.

Therefore, in accordance with section 38(6) of the Act I find that the tenants are entitled to return of double the \$625.00 deposit; less the \$625.00 deposit owed to the landlord for October rent.

As each application has some merit I decline filing fee costs to the tenants.

Based on these determinations I grant the tenants a monetary Order in the sum of \$625.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord's claim for damage to the unit is dismissed.

The landlord is entitled to compensation in the sum of \$625.00 for October, 2012 rent.

The tenants are entitled to return of double the deposit less the sum owed to the landlord.

Filing fee costs are declined.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 22, 2013

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Residential Tenancy Branch

