



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDC, MNSD, MND, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by landlords and both tenants.

The landlords' Application for Dispute Resolution indicates that the landlords are seeking an order of possession based on a 1 Month Notice to End Tenancy for Cause. However, in the details of dispute section of the Application the landlords identify that the tenants vacated the rental unit on January 26, 2013.

At the outset of the hearing I confirmed with the landlords that they are not in need of an order of possession and I have amended their Application to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on July 1, 2012 as a month to month tenancy for the monthly rent of \$900.00 due on the 1<sup>st</sup> of each month with a security deposit of \$450.00 paid. The tenancy ended effective January 26, 2013 after the tenants had vacated the rental unit.

The parties agree the landlord issued the tenants a 1 Month Notice to End Tenancy for Cause on January 12, 2013 with an effective vacancy date off February 12, 2013 citing the tenant or a person permitted on the property by the tenant has significantly

interfered with or unreasonably disturbed another occupant or the landlord. The tenants did not dispute the notice.

The landlord provided into evidence a copy of a letter dated January 16, 2013 to the tenants advising them that the correct effective date would be February 28, 2013 and that the tenants would be responsible for the payment of rent for February 2013 when it was due on February 1, 2013.

The landlord also provided a copy of a letter signed and dated (January 26, 2013) by the tenants to the landlords advising the landlord they had vacated the rental unit and that they had checked with the Residential Tenancy Branch (RTB) who advised them that they are not financially obligated to pay any further rent.

The tenants, in their written submission and verbal testimony, submit that as the male tenant is away from home working for extended periods and due to the aggressive behaviour of the landlords and an incident where one of the landlords relatives attempted to break in and assault the female tenant they decided they would move out their belongings early and end the tenancy themselves.

The landlords seek compensation for rent for the month of February 2013.

The landlords submit that the tenants failed to clean the rental unit thoroughly and have provided several photographs showing the condition of the rental unit at the end of the tenancy. The tenants submit that these photographs are to close ups and therefore they cannot determine if they were taken in the rental unit or somewhere else.

The tenants also submit that a condition inspection was not completed at the start of the tenancy or at the end. The landlords testified that a move in condition inspection was completed but no written report was provided. The tenants also provide several photographs of the condition of the rental unit. Both parties agree no move out condition inspection was completed together.

The landlords seek compensation in the amount of \$280.00 for cleaning services and \$52.95 for cleaning supplies, for carpet cleaning in the amount of \$178.08. The landlord has provided receipts.

The landlord testified that reason she is claiming both for cleaning services and cleaning supplies is that due to a medical condition she could not complete the work herself and that contractor she hired does not include the supplies required for the cleaning. The landlord testified that the rental unit carpet had been professionally cleaned prior to the tenancy and because the tenants had pets the carpet required cleaning at the end of the tenancy.

The parties both agree the tenants are responsible for the damage to the blinds identified in the landlords' claim in the amount of \$25.47 but the tenants testified they had left light bulbs despite the landlord's claim for \$7.92 for light bulbs.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 47 of the *Act* allows a landlord to end a tenancy for cause by giving the tenant notice to end the tenancy effective on a date that is not earlier than 1 month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement.

Section 47(4) stipulates that tenants who have reviewed a 1 Month Notice to End Tenancy for Cause are allowed 10 days to file an Application for Dispute Resolution seeking to cancel the Notice. I accept the evidence before me that the tenants did not dispute the notice and were therefore required to move out of the rental unit by the effective date.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

In the matter before me I find that the landlord had issued a 1 Month Notice to End Tenancy for Cause with an incorrect effective date and the earliest effective date would have been February 28, 2013.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While the tenants submit that the reason they left the rental unit early was because they did not feel safe in the rental unit because, in part, of the landlords' behaviour. However, while I accept, from the audio tapes provided into evidence, that the parties

were upset with each other I find no evidence that the female tenant was in any danger that would require her to vacate the property.

I also accept that in December 2012 there was an attempt from a family member of the landlords to enter the rental unit, however, if the tenants felt the female was in danger as a result of that action they provided no explanation as to why they did not vacate immediately after that event had occurred.

As I find the tenants have failed to provide any evidence of immediate danger to the female tenant as a reason to end the tenancy early and there is no evidence before me that the tenants had advised the landlord, in writing, of any breach of a material term of the tenancy agreement, when giving notice of their intent to end the tenancy at any time during the month of January 2013, the earliest they could have ended the tenancy would have been February 28, 2013.

For these reasons I find the tenants are responsible for the payment of rent for the month of February 2013.

While I accept that a move in Condition Inspection Report was not completed at the start of the tenancy I find the landlord cannot establish the condition of the rental unit at the start of the tenancy. However, this is only pertinent to a landlord's claim if there is disputed damage to the rental unit not in relation to the leaving the rental unit reasonably clean at the end of a tenancy.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the photographic evidence, I find the landlord has provided sufficient evidence to establish the tenants failed to leave the property reasonably clean. I accept the receipts as evidence to establish the value of that cleaning and for cleaning supplies.

As to carpet cleaning, Residential Tenancy Policy Guideline 1 states that tenants may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of time, if they have had pets living in the rental unit. Based on the testimony of both parties that the tenants had pets, I find the tenants are responsible for carpet cleaning.

As per the tenants' testimony that they agree that they damaged the blinds I find the landlord has established they are entitled to compensation as claimed. However, as the tenants testified that they have left light bulbs and there is no record of how many light bulbs were working at the start of the tenancy I find the landlord has failed to establish the tenants violated the *Act*, regulation or tenancy agreement sufficiently to be responsible for the purchase of bulbs.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenants provided their forwarding address in a written statement dated January 26, 2013 and they vacated the rental unit on the same date, I find the latest the landlords could file their Application for Dispute Resolution to claim against the security deposit was February 11, 2013 and they did so on February 6, 2013. As such, I find the landlords have complied with Section 38(1).

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,486.50** comprised of \$900.00 rent owed; \$332.95 cleaning and supplies; \$178.08 carpet cleaning; \$25.47 replacement blinds and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,036.50**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 04, 2013

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Residential Tenancy Branch

