



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application filed by the landlord who is seeking a monetary Order, an Order to be allowed to retain the security and pet deposits and recovery of the filing fee paid for this application.

The landlord testified that she served the tenants with this Application and notice of this hearing by way of registered mail sent to the forwarding address provided by the tenants.

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

### Issue(s) to be Decided

Is the landlord entitled to the Orders sought?

### Background and Evidence

This tenancy began on April 1, 2012. Rent was fixed at \$1,650.00 per month and the tenants paid a security deposit of \$825.00 and a pet deposit of \$100.00. The landlord submitted that she wished to reduce her claim from that sought in the Application as she did not have the evidence in time to prove the damages however she is now seeking loss of rent, loss of revenue and recovery of the filing fee.

The landlord submits that she served a 10 day Notice to End Tenancy on December 3, 2012 seeking unpaid rent of \$1,650.00 which was due December 1, 2012. The landlord testified that following service the tenants did not pay the rental arrears nor did they give notice of their intention to comply with the notice and vacate. The landlord then made application by way of Direct Request and on December 24, 2012 the landlord was awarded a monetary Order for December rent and a 2 day Order of Possession.

However, prior to receiving the Orders the tenants vacated the rental unit on December 18, 2012.

The landlord says that when they vacated they agreed that the landlord could retain \$240.00 from their security deposit to pay for garbage removal. The landlord testified that because the tenants did not advise her of their intentions she was unable to advertise the rental unit and she did not actually re-rent the unit until February 1, 2013 despite having placed advertisements. The landlord submits that Christmas is a very difficult time of year to secure a new tenant and because she had no notice from the tenants as to what their plans were following service of the 10 day Notice to End Tenancy, the landlord did not advertise the rental unit after the tenants' vacated on December 18, 2012. The landlord is therefore also seeking loss of revenue for half of January in the sum of \$825.00 which she believes is fair given the circumstances and in light of the fact that she actually lost \$1,650.00 for January 2013.

The landlord seeks the cost of this application in the sum of \$50.00 and she seeks to retain the pet and security deposits in partial satisfaction of her claims.

The tenants agree they vacated the rental unit on December 18, 2012 and that they did not pay December's rent. The tenants submitted that they did give notice on November 15, 2012 that they intended to vacate the premises on December 15, 2012 however due to difficulties with their moving truck they were unable to vacate until December 18, 2012. The tenants agreed that they allowed the landlord to retain \$240.00 from their security deposit for the removal of items from the rental unit as this was cheaper than renting a truck to do so themselves. The tenants also submitted that they wished it noted that the landlord had sent them harassing text messages.

### Analysis

Once served with a 10 day Notice to End Tenancy tenants have 5 days to pay the rent requested in the Notice or dispute the Notice if they believe they have grounds to do so; an example of such grounds would be having an Order from the Residential Tenancy Branch allowing tenants to withhold their rent or being able to prove that the rent had been paid. When tenants do not dispute the notice or pay the rent within the time limit the Act sets out that the tenants are deemed to have accepted the Notice and the tenancy ends on the effective date set out on the Notice; in this case December 18, 2012. Once the landlord serves a Notice that is undisputed the landlord may also proceed to obtain an Order of Possession and monetary Order for the unpaid rent by way of a Direct Request Proceeding. The landlord has supplied evidence that she did make a Direct Request and the record shows that on December 24, 2012 the landlord

was awarded a 2 day Order of Possession and rental arrears for December 2012 in the sum of \$1,650.00. Still the landlord has now brought this application seeking the same sum and the tenants are now disputing that they should have to pay rent for December. However, the matter is *res judicata*, this means that the matter has already been decided and cannot be decided again. The landlord already has a final and binding Order in her favour for December's rent and, having received an Order in her favour the Act allows the landlord to retain the deposits she holds in full or partial satisfaction of that Order.

The evidence in this matter shows that the tenants paid a security deposit and pet deposits totalling \$925.00. With the agreed upon deduction of \$240.00 this leaves a balance to the deposits of \$685.00. The landlord may retain that sum in partial satisfaction of the Order she received in the sum of \$1,650.00 leaving a balance owing by the tenants to the landlord on that Order of \$965.00. If the tenants do not pay this balance owing the landlord may enforce the Order as any Order of the Provincial Court of British Columbia might be enforced. As the landlord is already entitled to retain the deposits, her claim in this regard is dismissed as unnecessary.

With respect to loss of revenue for January 2013, the landlord says the tenants did not advise her of their intentions to vacate the rental unit on December 18, 2012. The tenants stated that they did give Notice on November 15, 2013 to vacate effective December 15, 2012. Even if I accept this testimony this would have been improper notice. When a tenancy runs from the first of each month as this one does, the earliest possible time the tenants could have vacated under their own Notice would be have been December 31, 2012. I therefore find that this notice was insufficient for the purposes of vacating by December 15 or 18 as was ultimately the case. The evidence shows that the tenants vacated following service of a 10 day Notice to End Tenancy without advising the landlord of their intentions. Given this the landlord was unable to advertise the rental unit and I find it appropriate that she received half of January's rent to cover the loss for hits period as claimed.

The landlord is provided with a monetary award in the sum of \$825.00 as claimed and recovery of the filing fee because she has been successful in this claim. The total monetary award in favour of the landlord will therefore be \$875.00. This is a final and binding Order as any Order of the Provincial Court of British Columbia.

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 26, 2013

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Residential Tenancy Branch

