



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR, MT, MNDC,  
For the landlord: OPR, OPC, MNR, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), for an order granting more time to make an application to cancel a notice to end tenancy, and for a monetary order for money owed or compensation for damage or loss.

The landlord applied for an order of possession for the rental unit due to unpaid rent, an order of possession for the rental unit due to alleged cause, monetary order for unpaid rent, and for recovery of the filing fee.

At the outset of the hearing, the evidence was discussed and neither party raised any issues regarding service of the application or the evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Matters-*

**#1-**The tenant confirmed that she vacated the rental unit the night prior to the hearing. As a result, the tenant confirmed that she no longer required consideration of her request seeking cancellation of the Notice. Likewise it was therefore no longer necessary to consider the landlord's request for an order of possession for the rental unit due to unpaid rent or alleged cause.

The tenant did wish to proceed on her request for monetary compensation.

**#2-**At the time the hearing began, I understood that the hearing was being conducted on the tenants' application; however well into the hearing, after the landlord had referred to her claim, I inquired as to whether or not the landlord had filed an application for dispute resolution.

The landlord stated that she had filed her application and served the tenants the notice of the hearing. The tenant agreed that she had been served the Notice of Hearing. I did not have the landlord's file before me at the start of the hearing; however during the course of the hearing, I made copies of the contents of the landlord's file and was able to view said contents.

The landlord testified about her application and the tenant provided a response.

I informed the landlord that prior to making a decision on the cross applications of the parties, I would request the landlord's file in order to make a full determination of the contents.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary award?
2. Is the landlord entitled to a monetary award?

Background and Evidence

I heard undisputed evidence that this tenancy began on May 1, 2011, monthly rent was \$800, and the tenants paid a security deposit of \$400 on or about April 20, 2011.

*Tenants' application-*The tenants' monetary claim listed in their application was in the amount of \$4000; however the tenants' revised their monetary claim in their evidence to the amount of \$5800, as follows:

Feb-May storage fee of \$75/ month	\$300
New rental unit, rent, security and pet damage deposits	\$1800
Additional medical costs, Dec-Apr, \$300 each	\$1500
Additional laundry costs, Sep-Apr, \$120 each	\$960
Additional cleaning supplies, mouse traps, Sep-Apr, \$20 each	\$160
Car insurance, Apr-May, \$65 each	\$130
Motor home storage	\$100
Additional deposit, utility hook up fee	\$250
Additional gas and misc. fees	\$200
Their security deposit	\$400

The tenants' relevant evidence included a written summary of their claim, classified advertising, indistinct photocopies of photographs of the rental unit, copies of rent receipts, a physician's statement, and copies of text messages between the tenant and the landlord.

In support of their application, the tenant submitted that the rental unit had a mouse infestation since the summer of 2012 and that the landlord failed to adequately address the extermination.

The tenant argued that they did alert the landlord of the mouse infestation all through the remainder of the tenancy; however, according to the tenant, the landlord informed the tenants that they would not address the problem until receiving a written request.

The tenant submitted that the remedy suggested to the tenant was to use steel wool in the mouse holes; however, according to the tenant, that did not resolve the issue as there were numerous mice within the walls.

The tenant submitted that as there was such a severe mouse problem, the tenants were forced to move their belongings into storage to protect their personal property as the landlord did not hire an extermination company.

Due to the mice issue, the tenants submitted that they incurred additional cleaning and laundry costs in order to keep the rental unit clean of mice feces and for washing extra loads of clothes. I note that the rental unit did not have laundry facilities.

The tenant further submitted that they experienced an issue with mould, as the landlord failed to winterize the home to keep it free from drafts. There were also water leaks around the doors and windows, according to the tenants.

As to the issues with the water supply, the tenants contended that they notified the landlords in the spring of 2012 of the discoloration of their water coming from the taps. Further the tenants argued that the water caused their family health problems, and that the landlord failed to address this issue.

As to the tenant's request for additional insurance costs, the tenants submitted that it was necessary to insure an additional vehicle to be able to relocate.

As the tenants were forced to relocate due to the landlord's failure to address their concerns, the landlord should be responsible for their increased rent and deposits, according to the tenants.

The tenants submitted that due to the landlord's failure to address their requests to address the mouse infestation and concerns with the water, causing serious health issues, they were forced to move. Therefore, according to the tenants, the landlord should be responsible for compensation for their additional costs as requested in their monetary claim.

*Landlord's response to the tenants' application*-The landlord denied being informed of the mouse issue until about a month and half ago. The landlord contended that there is no entry point for the mice as the house has all new flooring and walls, except possibly through plumbing. According to the landlord, her spouse attended the rental unit to inspect after the tenants' complaint about the mice, but was refused entry.

The landlord further went to the hardware store, and plumbing foam was recommended; however, the landlord was unable to apply the foam as he was denied access.

The landlord further contended that there has never been a mouse issue before, but if there was a mouse problem during the tenancy, it was due to the "filth" in the rental unit as the tenants refused to clean up.

As to the issue of unsafe water, the landlord contended that the local water system was flushed twice a year, and according to her research with the municipality and a plumber, the remedy for the murky water was to run the tap continuously until the water was cleared. This information was given to the tenants, according to the landlord. The

landlord contended that there were no health risks associated with the town's irrigation system.

The landlord submitted that she did attempt to hire plumbers to attend the rental unit, had an appointment with at least one, who failed to show up at the rental unit. The landlord submitted that due to the size of the small town, plumbers were not readily available and she was not informed for two weeks that the plumber did not attend.

As to the tenants' claim of declining health of the male tenant, the landlord said that when attending the rental unit she observed large amounts of tobacco products around and that he already was not in good health. Additionally, the landlord stated that she called the tenant's physician and spoke to him about his report. According to the landlord, the physician said that he had no evidence that there was a mouse infestation or that the water supply was contaminated; rather he wrote down what was reported to him by his patients.

The landlord also pointed out that there were no laundry facilities provided under the tenancy agreement; therefore no washer and dryer units were in the rental unit.

*Landlord's application-*The landlord's monetary claim listed in her application is in the amount of \$3816.70, for unpaid rent accumulated throughout the tenancy.

The landlord's relevant evidence included a tenant ledger sheet showing payments and deficits since the beginning of the tenancy, the tenancy agreement, the 10 Day Notice to End Tenancy for Unpaid Rent, dated April 9, 2013, issued to the tenants with an effective end of tenancy date of April 24, 2013, listing unpaid rent of \$3016.70 through April 1, 2013, photos of the condition of the rental unit, photos of the plumbing pipes, and a condition inspection report.

The landlord submitted that the breakdown of the amount claimed was listed in her tenant ledger sheet, which showed instances of unpaid rent, deficient rent and NSF fees charged as allowed by the tenancy agreement.

In response, the tenant admitted owing unpaid rent, but contested the amount claimed, stating that the landlord was off by \$1600 as shown by her receipt evidence with a corresponding discrepancy.

The tenant denied owing rent for May as they vacated by May 16.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

*Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.*

#### *Tenants' application-*

*Moving costs, car insurance costs, motor home storage costs, additional hook-up fees-*I find no legal basis for awarding the tenants costs of moving and storage as the tenants made choices in how they chose to move or store their vehicle. Additionally there is no remedy under the Act for recovery of vehicle insurance as this is a personal choice made by the tenants or for utility hook-up fees at their new residence.

Additionally the tenants failed to submit proof of incurring such expense or loss such as with receipts or invoices.

I therefore dismiss their claim for these costs.

*Medical costs-*I find the tenants submitted insufficient evidence that the landlord's actions caused them to suffer additional health problems, which was detrimental to their health. I accept that the doctor's statement was simply a recordation of the events as given to him by the tenants, which was not supported by any evidence in proof.

Additionally the tenants failed to submit proof of incurring such expense or loss such as with receipts or invoices.

I therefore dismiss their claim for these costs.

*Storage*-There was no documentation provided by the tenants that they incurred extra storage costs, such as with a receipt or invoice. Additionally, I find the tenants submitted insufficient evidence to support that the landlord was responsible for the need to obtain storage.

I therefore dismiss their claim for these costs.

*Laundry costs*-I find the tenants submitted insufficient evidence that the condition of the rental unit, due to the fault of the landlord, caused increased laundry expenses. I was provided no evidence of any laundry expense or that the tenants' laundry expense had increased since September 2012, as claimed by the tenants.

I therefore dismiss their claim for these costs.

*Increased rent, security deposit, and pet damage deposit at the tenants' new rental unit*- I find that this tenancy ended by the tenants' failure to pay rent and having been issued a Notice to End the tenancy. It is upon the tenants to secure a new residence and the tenants have provided no legal basis upon which to be awarded rent or deposits at their new residence.

I therefore dismiss their claim for these costs.

Due to the above, I dismiss the tenants' application, without leave to reapply.

*Landlord's application*- Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair," as defined in section 33 of the Act. As the tenants have not submitted evidence that any emergency repairs necessary were undertaken, they have not met this criterion.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the

tenants disputed the Notice. When a Notice is disputed, the tenants must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, the landlord provided specific accounting records, reflecting the amount of unpaid rent listed on the 10 Day Notice. Although the tenant submitted that the receipts show an inconsistency by the landlord, I do not agree. I find that the receipts verify the landlord's amount of unpaid rent claimed and as listed on the tenant ledger sheet. I therefore accept the landlord's claim for the amount listed on the Notice, \$3016.70.

Additionally, there is no dispute that the tenants remained in the rental unit beyond the effective date of the Notice, were still residing in the rental unit on May 1, and failed to pay rent of \$800 in May.

I find the landlord submitted conclusive proof that the tenants owed unpaid rent of \$3816.70 through May 2013.

I therefore find that the landlord is entitled to a monetary award of \$3866.70, comprised of unpaid rent of \$3816.70 through May 2013 and recovery of the filing fee of \$50.00, which I have granted due to the landlord's successful application.

I have not granted the landlord NSF fees as the landlord failed to submit evidence that she has incurred such an expense.

### Conclusion

I have dismissed the tenants' application without leave to reapply.

As I have found the landlord is entitled to a monetary award, I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in that amount, \$3866.70, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondent.

Dated: May 24, 2013

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Residential Tenancy Branch

