



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, RP, CNC, RR, FF, OPC, MNDC

### Introduction

This matter was first heard on January 14, 2013 by a different Arbitrator. That Arbitrator found in favour of the landlord. The tenants filed for an application for review consideration where it was deemed that another hearing be conducted. The matter was scheduled on March 18, 2013 where the hearing proceeded before me however it became apparent and necessary that more time was required and the matter was adjourned and concluded on this date. Both parties have filed their own application. The tenants are seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The landlord is also seeking a monetary order for compensation as well an order to retain the security deposit in partial satisfaction of the claim. The landlords participated on both dates. The tenants participated on the first hearing date only. The hearing proceeded and concluded on this date in the absence of the tenants. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to a monetary order?

### Background and Evidence and Analysis

The relationship between these two parties is an acrimonious one. At times the parties were in a highly charged screaming match with each making allegations of "liar and fraud" to each other during the first hearing date. The parties were more intent on arguing with each other than answering questions or presenting their claim.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. As this matter was conducted over two separate days and almost 2 hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not

repeat each and every item, instead it will focus directly on the claims as made in each party's application.

The tenancy began on or about July 16, 2011. Rent in the amount of \$1043.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$500.00. The tenants stated that they posted a \$250.00 pet deposit but the landlord denies that claim. The tenant provided a document that clearly shows at the outset of the tenancy the two deposits posted. I am satisfied that the tenants posted a \$500.00 security deposit and a \$250.00 pet deposit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As both parties have applied for a monetary order I will address each of their claims and my findings for each as follows.

The tenants gave their full testimony on the first hearing date and had ample opportunity to present their evidence. The tenants provided the following testimony:

**Tenant's Claim** - The tenants are seeking \$500.00 for having to deal with all the stress caused by the landlord reneging on their agreement. A move in condition inspection report was conducted upon move in but not at move out. The tenants didn't have any issues living in the unit until November 27, 2012. On that date the tenants noticed mould in the unit and asked the landlord to rectify the situation. On November 30, 2012 the tenants received a One Month Notice to End Tenancy for Cause. The basis for issuing the Notice was for repeated late rent payments. The tenant acknowledges that they had been late five times in the past year; however they eventually always made full and complete payment.

The tenants feel the landlord was trying to evict them instead of dealing with the mould; "probably as a cost measure". The tenants stated that they had to come to a verbal agreement with the male landlord on December 20, 2012. The agreement was; the tenants would relinquish their deposits in exchange for moving out of the unit by January 15, 2013. The deposits were to cover the remaining rent as well as the cost to repair a screen door and toilet tank lid that the tenants acknowledge that they had accidentally damaged.

The tenants "signed off" relinquishing the deposit on January 4, 2013. The tenants were not present nor were they informed of the move out condition inspection report. The tenants challenge the validity of the "Notice of Final Opportunity to Schedule a Condition Inspection". The tenants had not seen these documents until they were included as evidence for this hearing. The tenants vacated the unit on January 14, 2013 and considered this tenancy and matter concluded. The tenants did not attend the original hearing based on this agreement. The tenants received the decision of the Arbitrator on January 30, 2013 that found in favour of the landlord. The tenants were appalled that the landlord had "so fragrantly lied and committed fraud". The tenants feel \$500.00 is a reasonable and fair amount of compensation in what they have had to deal with.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants have not been able to provide any proof of "out of pocket costs" or sufficient evidence of loss or damage caused by neglect from the landlord. The tenants did not adequately quantify how they came to the amount sought or provide sufficient evidence for it; accordingly I dismiss the tenant's application.

The landlords gave their full testimony and presented their evidence on April 24, 2013 in the absence of the tenants. The landlords provided the following testimony:

The landlords adamantly dispute the claims of "the agreement" as the tenants stated. The landlords stated on numerous occasions that this entire matter has caused them great stress and anxiety and feel that the tenants have been untruthful throughout the proceedings. The landlord stated that the tenants left on January 14, 2013 without paying the months' rent or the accrued late charges of \$101.00. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 5, 2013. The landlord also said that the tenants have been late with the rent payment 6 months out of 8 months therefore the landlord issued a 1 Month notice to End Tenancy for cause on November 30, 2012. The Notice to End Tenancy was dated November 30, 2012 with

an effective vacancy date of December 31, 2012. The landlord provided rent receipts that showed the rent had been paid late in the Months of June, August, September, October, November of 2012 and for January, 2013. The landlord is seeking a variety of claims for costs incurred as follows.

**Landlords First Claim** – The landlord is seeking \$1043.00 in unpaid rent and \$101.00 in late fees. The tenants stated that they never received the notice and that an agreement was in place for the landlord to retain the deposit and that they would move out by mid January 2013. The landlord denies this claim and has provided the notice for this hearing as well as documentation to support his claim of unpaid rent and late fees. In the absence of any sufficient disputing evidence from the tenants I find that the landlord is entitled to \$1144.00 in unpaid rent and late fees.

**Landlords Second Claim** – The landlord is seeking \$400.00 for malicious damage. The landlord stated that when he entered the unit after the tenants had abandoned it, he observed a “Future Wax Spout in the drain”. The landlord stated the weather at that time was -16 degrees Celsius and that the tenants had turned off the breakers to the unit. It was clear to him that the tenants poured wax into the drain and hoped the wax would “freeze up the pipes”. The landlord stated this was “very obvious” to him that was their intent. I asked the landlord if he had seen the tenants pour the wax into the drain, his response was; “no, but it’s pretty obvious that they did”. I asked the landlord if he incurred \$400.00 worth of damage and was “out of pocket” this amount, his reply was; “no not yet”. I am not satisfied that the landlord is entitled to the amount claimed based on the insufficient evidence before me and accordingly I dismiss this portion of the landlords claim.

**Landlords Third Claim** – The landlord is seeking \$37.47 to replace the kitchen blind. The landlord provided a receipt for \$7.47 for the blind and photo as well as a condition inspection report to support his claim. The landlord is also seeking \$30.00 for driving to the store to pick up the blind and install it. The landlord was not able to provide sufficient evidence to support the \$30.00 labour charge or explain how he was entitled to the amount. In the absence of any sufficient disputing evidence from the tenant in regards to the blind itself, I find the landlord is entitled to \$7.47.

**Landlords Fourth Claim-** The landlord is seeking \$50.83 for the replacement of a screen door. The tenants acknowledged that they had accidentally damaged the screen door and that they did not dispute this amount. The landlord is entitled to \$50.83.

**Landlords Fifth Claim** – The landlord is seeking \$85.57 to replace toilet tank lid. The tenants acknowledged that they had accidentally damaged the toilet tank lid and did not dispute this amount. The landlord is entitled to \$85.57.

**Landlords Sixth Claim** – The landlord is seeking \$95.20 for carpet cleaning. The landlord provided a receipt to support this claim. In the absence of any sufficient disputing evidence from the tenant I find that that landlord is entitled to \$95.20.

**Landlords Seventh Claim** – The landlord is seeking \$30.00 for rubbish and garbage removal from the property. The landlord submitted a receipt to support his claim. In the absence of any sufficient disputing evidence from the tenants I find that the landlord is entitled to \$30.00.

**Landlords Eight Claim** – The landlord is seeking \$46.32 for an aerator that the landlord alleges the tenant took. The landlord did not provide any evidence to support the allegation that the tenant “took” the aerator. I dismiss this portion of the landlords’ application.

**Landlords Ninth Claim** – The landlord is seeking \$111.72 to replace the locks and cut new keys. The landlord stated that the tenant did not leave the keys at move out and was unsure if she would return. The tenant had stated in the first hearing that the landlord knew where to find her since they had moved down the block from them. The tenant has a responsibility to leave keys with the landlord at move out. In the tenant’s own testimony she acknowledged that she had not left them with the landlord. I find that the landlord is entitled to \$111.72.

**Landlords Tenth Claim** – The landlord is seeking \$162.33 for supplies and labour to clean the suite. The landlords wife conducted the work at a rate of \$13.00 per hour X 12 hours = \$156.00 plus \$6.33 in supplies. The landlords provided a receipt and photos to support this portion of their claim. In the absence of sufficient disputing evidence from the tenants I find that the landlord is entitled to \$162.33.

**Landlords Eleventh Claim** – The landlord is seeking \$600.00 for “Karen cried Wolf” re: fridge. The landlord stated that the tenant had called the landlord as she had discovered some black stains under the fridge. The landlord attended at the unit to find that the tenant had cleaned up the stain. The landlord attended at the local department store to inquire further. He was advised it was very unlikely that any oil or other liquids would leak from the fridge as it is a sealed component. The landlord alleges the tenant put “black sauce” under the fridge to encourage him to buy her a new fridge. The landlord did not provide any proof of this allegation nor was he able to explain how he came to

the \$600.00 he was seeking. The landlord did not explain how he came to this total other than state "time is money". Based on the insufficient evidence before me I dismiss this portion of the landlords' application.

As for the monetary order, I find that the landlord has established a claim for \$1687.12. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$500.00 security deposit and the \$250.00 pet deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$987.12. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$987.12. The landlord may retain the security deposit.

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: May 7, 2013

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Residential Tenancy Branch