



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANAK PROPERTIES ROYAL LEPAGE CITY CENTRE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNL MT MNDC MNSD OPL FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To extend the time limitation to make this application pursuant to section 66;
- c) A monetary order for the return of the security deposit and compensation for upgrades done to the home; and
- d) To recover the filing fee for this application.

Service:

There is no Notice to End Tenancy on the correct form but an email advising the tenants that the landlord is planning to move into the property at the end of the lease term. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on June 30, 2013 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

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

Has the tenant proved on the balance of probabilities that the tenancy was ended on the provisions of section 49 for landlord's use of the property? If so, to what compensation are they entitled? Or has the landlord demonstrated the tenancy legally ended on the provisions in a fixed term lease?

Has the tenant proved on the balance of probabilities that they have not received their security and pet damage deposits and that they are entitled to be compensated for upgrades to the home? Are they also entitled to reimbursement for 1/3 of the utility bills?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in May 2012 on a fixed term lease expiring on April 30, 2013, rent was \$2550 a month and a security deposit of \$1275 and a pet damage deposit of \$1275 were paid. In evidence is the signed fixed term lease and clause 4(d) is checked and initialled by both parties. The tenants said that when they inspected the home originally, they were verbally promised that it would be at least a two year term, they shook hands on it but did not realize that the written contract provided for only a one year term. They said they painted and put upgrades in the home and never would have done so if they had realized that it was a one year term only.

When the tenants were informed in February that the landlord expected to take vacant possession for himself at the end of the lease term, they were concerned about the child's school term. The landlord granted them an extension to June 30, 2013 on condition they sign a Mutual Agreement to End Tenancy. They signed this agreement but say they were bullied into it; on the bottom of the agreement, the female tenant wrote the "Agreement subject to reimbursement of screens \$1344 and \$2550 security deposit and interest". The landlord agreed to reimburse for the cost of the screens and when the tenants said they needed the deposits immediately to secure another home, the landlord cancelled the automatic withdrawal of rent for June to give them their deposits back in their bank account immediately. The tenant said they think they are entitled to a free month anyway as the landlord was taking possession of the home for his own use.

The tenants claim as follows:

\$2550: for refund of security and pet damage deposits

\$2750: for painting the home. The colours were dark.

\$1344: for screens

\$415: for a custom bench cushion designed to fit in the window of the home

\$741.72 Telus utility

\$514.12 Fortis gas

\$383.33 BC Hydro

The landlord said he had never agreed to reimburse the tenants for painting and provided emails where he stated this. The tenants agree that he had given consent for them to paint at their own cost. The landlord also did not agree to pay for the bench cushion and advised the tenants to take it with them. The utility bills were discussed. According to the lease terms, the tenants are responsible for 2/3 of the utilities as there is a downstairs suite in the home which was occupied for periods of time but not

continually by one tenant. The tenants said they had provided copies of the utility bills to the Residential Tenancy Branch but, after a search, I was unable to find them and the landlord had not received them. It was agreed by the parties that the landlord would reimburse 1/3 of any utility bills for which the tenant had not received reimbursement after the tenant sends them by fax to the agent's office.

Included with the evidence is a lease, a mutual agreement to end tenancy, many emails and invoices. The landlord also submitted some invoices for damages but was advised that these would be the subject of his application if he files one.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the party making the claim to prove it on a balance of probabilities.

I find the weight of the evidence is that the tenants signed a lease committing them to give vacant possession to the landlord on April 30, 2013. I find the evidence of the landlord credible that it was extended to June 30, 2013 in order to accommodate the tenant's need for adjustment to the school term and I find the Mutual Agreement to End Tenancy signed by both parties was binding. The evidence of the landlord is well supported by the emails and documents in evidence. In these circumstances, a formal Notice to End Tenancy is not required and I find one was never served; an email advising of the upcoming legal end to the tenancy is not a Notice to End Tenancy. Therefore, I find the tenant is not entitled to a free month's rent as there was no notice under section 49 entailing compensation under section 51.

I find the landlord in cancelling the tenants' automatic bank withdrawal payment of \$2550 for June 2013 refunded their security and pet damage deposits in full. I find this was to accommodate the tenants need for immediate funds. No interest is payable on deposits in 2012 so I find the tenant not entitled to further payments in respect to the deposits.

I find the landlord agreed to reimburse the tenant \$1344 for the window screens so a monetary order in favour of the tenant will be issued.

In respect to the claim for painting and a bench cushion, I find that the landlord never agreed to reimburse the tenants for these items. He said in emails and the tenant agreed that he told them the painting would be at their own cost. It is unfortunate that

the tenants paid for items they could ill afford but I find no obligation on the landlord in the Act and they have proved no obligation on the landlord to reimburse them for these items unless by agreement. Since colour choice and cushions are matters of individual taste and not a landlord preference, I find the landlord has not received a benefit or been unjustly enriched by these items. I dismiss this portion of their claim.

I find the weight of the evidence is that the tenants are entitled to be compensated for one third of utilities whether or not the downstairs suite was occupied. This is a lease provision. I find the landlord responsible for such compensation. As insufficient bills were provided, I find the parties have agreed that the tenants will be reimbursed for 1/3 of the utilities for which they were not compensated upon the tenants sending the bills by fax to the agent's office.

**Conclusion:**

I find the tenants entitled to a monetary order as calculated below. I find them entitled to recover their filing fee for this application as it had some merit.

Reimbursement for screens	1344.00
Filing fee	50.00
Total Monetary Order to tenants	1394.00

**I HEREBY ORDER that the landlord reimburse the tenants for one third of the utilities (for which they have not been compensated by other parties) within fifteen days of receiving the utility bills by facsimile transmission to the agent's office. If the landlord does not reimburse the tenants, I give the tenant's leave to reapply with an accounting and copies of all utility bills for a monetary order for such compensation.**

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: August 22, 2013

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Residential Tenancy Branch