



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Luxury Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent confirmed receipt of the tenant's evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

At the outset of the hearing the landlord's agent requests an adjournment of the hearing as the landlord is out of the country; the agent who filed this application no longer works for the landlord and this agent attending as had little opportunity to see the landlord's evidence. The tenants do not agree to an adjournment as they are fully prepared to proceed with the hearing today. I refer the landlord to the Rules of Procedure section 6.4 which states:

Without restricting the authority of the Arbitrator to consider other factors, the Arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding: the oral or written submissions of the parties; whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];

- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have not granted the landlords request to adjourn the hearing today. The landlord has appointed an agent to attend the hearing and the landlord should have been fully prepared for this hearing to take place by ensuring his agent had full particulars and access to any evidence the landlord wanted to present particularly as it is the landlords application. The hearing therefore continued as scheduled.

#### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the security and pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

#### Background and Evidence

The parties agree that this tenancy started on December 01, 2012. This was a fixed term tenancy for two years and was due to end in December, 2014. Rent for this unit was \$3,000.00 per month and was due on the first day of each month. The tenants paid

a security deposit of \$1,500.00 and a pet deposit of \$1,500.00 at the start of the tenancy.

The landlord's agent testifies that the tenants gave notice to end the tenancy for April 30, 2013 but did not vacate the rental unit until May 03, 2013 when the tenant returned the keys to the landlord. The landlord therefore seeks to recover three days of rent as the tenants have overheld at the rental unit to an amount of \$290.00.

The landlord's agent testifies that in the addendum to the tenancy agreement there is a liquidated damages fee charged of \$1,500.00 if the tenants break the lease before the end of the term. The landlord's agent testifies that the tenants gave notice to end this fixed term tenancy before it was due to expire in December, 2014 and therefore broke the fixed term agreement. The landlord incurred costs to remarket the unit and in overheads for office staff. The landlord's agent testifies that the addendum to the agreement containing the clause about liquidated damages has been initialed by the tenants.

The landlord's agent testifies that the tenants failed to paint the main stairwell of the unit and other scuffs and marks on the paintwork. The landlord seeks to recover \$500.00 for this work.

The landlord's agent testifies that the landlord seeks to recover \$175.00 for an excess cleaning fee for cleaners that had to come in and clean the unit after the tenants vacated.

The landlord's agent seeks an Order to keep the tenants security and pet deposit to offset against the landlords monetary claim.

The tenants dispute the landlords claim. The tenant DT who testifies at the hearing states that they were out of the house by May 01, 2013 and only had to return to collect a few boxes which had been left on that day. The tenant testifies that they returned the

keys to the unit on May 01, 2013 by handing them to the landlord's cleaning lady. The tenant agrees that they still had some boxes stored in the garage until May 03, 2013 and they collected these and then returned the keys to the garage and gate to the landlord on that date. The tenant disputes the landlords claim for lost rent for three days and testifies that the new tenants did not move into the unit until May 11, 2013 as documented in a statement by the tenants neighbour.

The tenant does not dispute that they broke the lease but states that they had lost their quiet enjoyment of the rental unit due to some renovations that were taking place. The tenant also found the landlords right to inspect the unit once a month to be invasive. The tenant disputes the landlord's fee for liquidated damages of \$1,500.00 and states that the landlord did not incur these costs to re-rent the unit as the landlord did not pay his agent at that time. The tenants have provided documentary evidence from the landlord's former agent alluding to this. The tenant testifies that they do not recall ever having been given a copy of the addendum to the tenancy agreement containing a clause about liquidated damages and the tenancy agreement itself states that there are no additional pages to the agreement.

The tenant disputes the landlords claim for painting and testifies that the stairwell was not painted and was in poor condition at the start of the tenancy. The tenant has provided a written statement from the painter that painted the master bedroom for the tenants at the start of the tenancy who has stated that the stairwell required painting at the start of the tenancy. The tenant testifies that they also informed the landlord that this work was required when they handed the keys back to the landlord on May 03, 2013. The tenant disputes that there was any further painting required as declared by the landlords agent as the tenants had their painter do touch up painting to any marks caused during the tenancy.

The tenant disputes the landlords claim for cleaning costs of \$175.00. The tenant testifies that the unit was fully cleaned at the end of the tenancy. The unit had not been fully cleaned at the start of the tenancy and the tenant discovered some unused kitchen

cupboards which remained filthy and were only discovered at the end of the tenancy by the tenants cleaner. Photos of these have been included in evidence.

The tenant disputes the landlords claim to keep the security and pet deposit and testifies the landlord received their forwarding address on May 03, 2013 in writing and should have return their security and pet deposits. The tenant testifies that the landlord did not lose any rent for May as the unit was re-rented for May 01, 2013. The tenant testifies that they were not given a final opportunity to attend a move out inspection by the landlord using the correct form and no copy of a move out inspection report has been forwarded to the tenant. The tenants seek to recover the security and pet deposits of \$3,000.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for three days from May 01 to May 03, 2013; The landlord argues that the tenants did not return the keys until May 03, 2013; the tenants argue that they returned the keys to the house on May 01 and the keys to the garage and gate on May 03. In either event the tenants must provide vacant possession of a rental unit on the last day of the month by 1.00 p.m. when the tenants have given the landlord written notice to vacate a unit. As the tenant agrees that they still had boxes stored in the garage until May 03, 2013 this is not full vacant possession of the rental; property. However, the tenants have also testified that the landlord re-rented the unit from May 01, 2013 even though the new tenants did not move in until May 11, 2013. The landlord has provided no evidence to show that the new tenants did not pay rent from May 01, 2013. In this matter the person making the claim, in this matter being the tenants must provide corroborating evidence to meet the burden of proof. As the tenants have not provided sufficient evidence to show that the new tenants started to pay rent from May 01, 2013 I must find in favor of the landlords claim for **\$290.00** for not providing full vacant possession of the rental unit for May 01 and overholding at the rental unit for three days.

With regard to the landlords claim for a liquidated damages fee of \$1,500.00; the tenants argue that they do not recall this clause in the tenancy agreement and argue that the tenancy agreement states that there are zero pages attached. The tenants have testified that they did not receive a copy of an addendum with this clause. The landlord's agent argues that the addendum to the tenancy agreement has been initialed by the tenants so they would have had sight of it. The landlord has the burden of proof in this matter and when the landlord's agent's testimony contradicts that of the tenants then the landlord would be required to provide corroborating evidence to meet the burden of proof. The landlord has provided no evidence to show that there is an addendum to the tenancy agreement which stipulates that liquidated damages of \$1,500.00 will be charged to the tenants in the event the tenants break the fix term lease. Consequently, it becomes a question of one person's word against that of the other and the burden of proof has therefore not been met. The landlord's application for liquidated damages is therefore dismissed.

With regard to the landlords claim for damage to the walls and for cleaning costs; the tenants dispute that they caused any damage to the walls in the stairwell and have testified that any other scuffs or marks were touched up by their painter. The landlord has provided no supporting evidence to show that the tenants are responsible for any marks on the walls and the landlord has not provided any evidence concerning an amount paid to paint the walls. The landlord has provided no evidence to show that the unit was not left in a reasonably clean condition at the end of the tenancy or proof of the actual costs to do any additional cleaning.

Consequently the landlord has failed to meet the burden of proof in this matter and this section of the landlord's monetary claim is dismissed.

As the landlord has been partially successful with this claim I find the landlord may recover half the filing fee to an amount of **\$25.00** from the tenants.

The landlord may retain the amount of \$315.00 from the tenant's security deposit pursuant to s. 38(6)(b) of the *Act*. The balance of the security and pet deposit must be returned to the tenants.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may retain the sum of **\$315.00** from the security deposit. The balance of the security and pet deposit of \$2,685.00 must be returned to the tenants.

A Monetary Order has been issued to the tenants for the sum of **\$2,685.00**. The Order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim is dismissed without leave to reapply.

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 09, 2013

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Residential Tenancy Branch