



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC / OPB, MNR, MNDC, FF  
CNC, MNDC, MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlords for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and ii) by the tenants for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security and pet damage deposits / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from March 1, 2013 to March 1, 2014. Monthly rent of \$900.00 is due and payable in advance on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$100.00 were collected. With the participation of both parties, a move-in condition inspection report was completed on February 26 or 27, 2013.

The landlords issued a 1 month notice to end tenancy for cause dated July 22, 2013. The notice was served by way of sliding under the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is August 31, 2013. Reasons shown on the notice in support of its issuance are as follows:

- Tenant has caused extraordinary damage to the unit / site

- Tenant has not done required repairs of damage to the unit / site
- Breach of a material term of the tenancy agreement

Subsequently, while the tenants filed an application to dispute the notice on July 29, 2013, they vacated the unit on August 31, 2013.

A forwarding address was not provided by the tenants on August 31, 2013. During the hearing, however, tenant "EML" informed the landlords that her mother's address could be used as a forwarding address, and the landlords were given this forwarding address in writing during the hearing.

The keys to the unit were not returned on August 31, 2013. During the hearing, however, the 2 unit keys in the tenants' possession were returned to the landlords.

A move-out condition inspection report was not completed by the parties on August 31, 2013. However, during the hearing the parties agreed to meet at the unit on Sunday, September 8, 2013 at 10:30 a.m. in order to complete the inspection and report. It was also agreed that the tenants would return to the landlords the other key to the unit which is currently in the possession of tenant "EML's" mother.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony of the parties, the various aspects of the respective applications and my findings around each are set out below.

## **LANDLORDS**

### *Order of Possession.*

As the tenants vacated the unit on August 31, 2013, and as the tenants have removed all of their possessions and returned 2 of the 3 unit keys in their possession, during the hearing the parties mutually agreed that the landlords are at liberty to enter the unit at their earliest opportunity. In the result, I consider the application for an order of possession to be withdrawn.

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\$900.00: *loss of rental income for September 2013.*

The tenants vacated the unit on August 31, 2013, however, 2 of 3 keys to the unit were not returned until the hearing on September 6, 2013. The landlords testified that as they felt they did not have authority to enter the unit pending the outcome of the hearing, they have not thus far shown the unit to prospective renters. In view of these circumstances and in light of the fact that a move-out condition inspection and report had not been completed at the time of the hearing, I find that this aspect of the landlords' application is premature, and is therefore dismissed with leave to reapply.

During the hearing the landlords returned to the tenants their post dated rent cheques for the 6 months from September 2013 to February 2014.

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\$346.66 (\$134.51 for August + \$212.15 for September) *advertising for new renters.*

In anticipation of an end to tenancy, or after a tenancy ends, it is usual for landlords to recruit new renters. That process may be undertaken by a range of means which includes, but is not necessarily limited to, word of mouth, notices posted in public places, advertisements placed on-line, and newspaper advertisements.

In this case, the parties entered into an agreement pursuant to which, "If the lease is broken, the tenants are responsible for a 1 month advertisement in [certain newspapers] [at a cost of] \$200.00 approx." In these circumstances, while the tenants vacated the unit after issuance of the 1 month notice, they nevertheless filed an application to dispute it. In the result, I have made no finding that the lease was broken.

Pertinent to this cost claimed by the landlords, attention is drawn to Residential Tenancy Policy Guideline # 4, "Liquidated Damages," which "deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages."

Following from all the above, this aspect of the landlords' application is dismissed.

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\$8.06: *photographs (and other costs arising from use of registered mail.)*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlords' claim is dismissed.

## TENANTS

\$1,800.00 (2 x \$900.00): *2 months' rent.*

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further, Residential Tenancy Policy Guideline addresses "Right to Quiet Enjoyment."

I note that the tenants filed their application following the landlords' issuance of a 1 month notice to end tenancy for cause. In general, I find that both parties undertook to do their best to preserve an amicable landlord – tenant relationship, while living in close proximity with each other. I further find there is insufficient evidence of persecution or intimidation of the tenants by the landlords, or the intentional removal or restriction of services by the landlords. Accordingly, the application for compensation on the basis of an alleged breach of the right to quiet enjoyment is dismissed.

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\$200.00: *costs arising from hindered access to laundry.*

For reasons similar to those set out immediately above, I find that the tenants have failed to meet the burden of proving entitlement to costs claimed for allegedly hindered access to laundry. Specifically, I find an absence of evidence that the landlords intentionally either removed or restricted access to laundry facilities or, in any event when access was hindered, that it was sufficient to support the compensation claimed. In the result, this aspect of the claim is dismissed.

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\$2,000.00: *moving costs.*

While exceptional circumstances may lead to a different outcome, tenants generally bear the costs associated with moving. In the circumstances of this dispute, for their own reasons the parties made a determination that it was in their respective best interests to end the tenancy earlier than had been anticipated. In the result, I find there

are insufficient grounds for finding that the tenants have established entitlement to any reimbursement of moving costs, and this aspect of their application is dismissed.

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\$550.00 (\$450.00 + \$100.00): *return of security & pet damage deposits.*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

As earlier noted, the tenants did not provide a forwarding address when the tenancy ended. During the hearing, however, tenant "EML" informed the landlords that her mother's address could be considered to be the tenants' forwarding address, and that address was duly provided to the landlords in writing during the hearing.

Accordingly, I find that the landlords will be deemed to have received the tenants' forwarding address five (5) days after the date of this decision. I further find that the landlords will have fifteen (15) days from the fifth (5<sup>th</sup>) day to deal with the tenants' security and pet damage deposits pursuant to the provisions in section 38 of the Act. In the meantime, this aspect of the tenants' application is dismissed with leave to reapply.

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The respective applications to recover the filing fee are both hereby dismissed.

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### Conclusion

Aspects of both applications are variously either dismissed or dismissed with 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: September 10, 2013

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Residential Tenancy Branch

