



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GRAND FORKS REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, FF, O

### Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for cause, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 6, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Is there a loss or damage to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for loss or damage and if so how much?
4. What other consideration are there?

### Background and Evidence

This tenancy started on April 1, 2005 as a month to month tenancy. Rent is \$600.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$300.00 on April 1, 2005.

The Property Manager said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 28, 2013. He served the Notice on July 28, 2013 by personal delivery to the Tenants. The Effective Vacancy date on the Notice was August 31, 2013. The Tenants are living in the unit and the Property Manager requested an Order of Possession for September 30, 2013 if the Tenants’ application is unsuccessful.

The Property Manager continued to say that the Tenants were given two Caution Notices one on July 19, 2013 and one on August 3, 2013. The first notice was to remove highway material from the rear of the home and to clean up the yard and remove garbage. The second notice was again to remove the highway material as the Landlord thought it may be contaminated. On the second Caution Notice the landlord said the material had to be removed from the property not moved to a different place on the property. The Landlord said the Tenants have done some clean up, but there is still garbage in the yard and the highway material has not been removed. As a result of the Tenants not complying with the Property Managers request and the Notice of July 19, 2013 the Property Manager said he issued a Notice to End Tenancy for Cause dated July 28, 2013. The Landlord said there are approximately 8 to 10 dump truck loads of the highway material on the property and the Tenants did not get permission from the owner or the Property Manager to dump the highway material on the property. The Property Manager said he believes the material could be contaminated and may present a risk to the property.

The Tenants said the highway clean up company offered the highway material to them for free and there was no time to get permission to dump the material on the property from the owner or the Property Manager, so they accepted the material to improve, fill in and expand their yard. The Tenants said that later they have talked with the company that dumped the highway material and they were told by the company that the owners were OK with the material being dumped on the property. The Property Manager said the owner did not want the material on the property and he was instructed by the owner to take the action that he has against the Tenants.

The Tenants said they received the caution notices to remove the highway material, but they have not removed it. The Tenants said they thought the company would come and remove the material as they do not have the equipment to move that amount of dirt material.

The Tenant continue to say they are making a monetary claim against the Landlord as they only found out in November, 2010 they have been supplying water through their pump system to another house on the property, to an animal water and to a hydrant. The Tenant said they believe their hydro bills have increased by \$100.00 per month because of the extra hydro needed to run the pump to provide water to the other water systems. The Tenant said the first four months of the tenancy no one was in the house, but after that the house has been occupied and there has been animal using the waterer and hydrant. The Tenant submitted a copy of all the hydro amounts paid during the tenancy and the Tenant said they estimated that the bills increased by \$100.00 per month because of the other waterers and the other house. The Tenant said they are claiming \$100.00 per month for 99 months which equals \$9,900.00 less a rent free period of \$3,600.00 giving a total claim of \$6,300.00 for extra hydro costs.

In addition the Tenant said the Owners of the property parked their camper on the Tenants' rented property and used hydro for the camper from May to September for at least 4 years. The Tenant said this increased their hydro costs and the Owners were an

intrusion on their privacy. The Tenant said the Owners used their shower and entered the Tenants' house whenever they wanted to during the time the Owners were living in the camper.

The Property Manager said he was unaware of these claims until the Notice to End Tenancy was issued to the Tenants. In addition the Property Manager said he took over the property in July, 2013 so he does not have first hand information on the events prior to July, 2013. The Property Manager continued to say that he had a water well company estimate the costs of running the well for the other house and hydrants and he was told the cost would be .20 cents a day for 10 people. The Property Manager submitted an unsigned letter from the water well company confirming these statements. As a result the Property Manager requested the Tenants' monetary claim be dismissed.

The Tenants said in closing that they have looked for other rental units and they do not want to move as their children are graduating from school this year and they do not want to interrupt their schooling. The Tenants said they would like the tenancy to continue to June, 2014.

The Property Manager said in closing that he has been instructed to end the tenancy if possible. Consequently the Property Manager requested an Order of Possession for September 30, 2013.

### Analysis

**Section 32** of the Act says: (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

**(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.**

**(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.**

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find the Tenants did not have permission to dump the highway material on the rental property and this material may be a health issue and is a cleanliness issue that does damage the rental property. The Tenants were notified by the Property Manager on July 19, 2013 and on August 3, 2013 to remove the highway material from the property. The Tenants did not remove the material when requests to in writing by the Property Manager. Consequently I find the Landlord's Notice to End Tenancy for Cause is valid. Further as the Tenants agreed they did not have permission to dump the material on the rental property and they said they have not removed the highway material; I find the Tenants have not established grounds to have the Notice to End Tenancy for Cause dated July 28, 2013 canceled. I dismiss the Tenants' application to cancel the Notice to End Tenancy for Cause dated July 28, 2013. The Landlord's Notice to End Tenancy dated July 28, 2013 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect September 30, 2013.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Tenants monetary claim of \$6,300.00 for increased hydro costs for the Tenants due to the Tenants' water system providing water to another house, an animal waterer and a water hydrant I find the following:

The Tenants said they estimated the amount of \$100.00 for 99 months from the list of hydro payments. I understand an exact amount would be impossible to calculate but it is the responsibility of the claimant to prove the amount of the claim. In reviewing the amounts paid for hydro there is no pattern and the amounts paid when there was no one living in the other house are not more than many of the months when someone was living in the other house. The average cost of the hydro in the first four months when the other house was vacant is \$209.75. In reviewing the payment amounts it is apparent that most of the months on the list are for an amount less than the average amount when the Tenants were the only water users. Consequently I do not accept the Tenants claim that they have a loss of \$100.00 per month for 99 months. As well the Tenant said they discovered that they were providing water for the other house in November, 2010. Yet the Tenants said they did not mitigate this situation with the

Landlord either by asking rent compensation or having the other tenants pay part of the hydro bill for the water consumption. Consequently the Tenants have not proven a loss has occurred, nor have the Tenants verified the loss or showed how they mitigated the loss. Therefore I find the Tenants have not established proof of the loss they are claiming and I dismiss the Tenants' monetary claim without leave to reapply.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective September 30, 2013 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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 11, 2013

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Residential Tenancy Branch

