



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNR, FF

### Introduction

This matter dealt with an application by the tenant for compensation as a result of the landlord allegedly wrongfully evicting her and destroying her belongings. The landlords cross applied for a Monetary Order for compensation for loss of revenue, cleaning and repairs to the rental unit. All parties attended the teleconference hearing.

### Issues(s) to be Decided

Are the Landlords or Tenant entitled to compensation and if so, how much?

### Background and Evidence

Service of the applications was admitted by the parties. The landlords' rebuttal or new evidence was excluded as it was not received by the tenant. The landlords' DVD evidence was also excluded as I was unable to access it. Based upon the evidence of the parties I find that this month-to-month tenancy started on August 25, 2012 and ended on June 21, 2013 when the tenant moved out. Rent was \$ 900.00 per month payable in advance on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$ 450.0 at the beginning of the tenancy.

The tenant testified that her rental cheque for June 2013 was returned to her by her bank as N.S.F. on or about June 5, 2013. She then text messaged (T.M.) the landlords on June 11, 2013 that she intended to move out "find a cheaper place." The tenant testified that she next received a T.M. from the landlords that she "needs to get out." The tenant paid one half of the rent for June amounting to \$ 450.00 in cash and proceeded to look for a new unit. The tenant admitted that the landlords returned her security deposit in mid-June although she had claimed for the recovery of it in her Application for Dispute Resolution. She testified that she asked for it back from the landlords to give it to her new landlord. The tenant testified that she left the unit to look for boxes on June 20<sup>th</sup> to pack and returned later or the next day to find that she was locked out of her unit. She testified that she gave her key to landlord and permission to move her furniture into the garage to help her move out. The tenant testified that she never returned again but her ex boyfriend or husband returned to the unit on June 22, 2013 and sent her pictures of her belongings by T.M. all depicting their destruction. She then determined to discard them based upon the text message pictures. Her belongings

consisted of food, dishes, beds and a graduation dress for which she was very sentimentally attached. The tenant testified that she did not return to the unit because she was intimidated by the landlord M.M. as he yelled at her and his wife and was overly aggressive. The tenant claimed she obtained a storage locker for 2 months as it took her that duration to find another rental unit. . The tenant is claiming for the following losses she alleges were all occasioned by the landlords' fault:

Lost wages by child's father	\$ 224.00
Food :	\$ 280.00
Beds destroyed by mould:	\$ 600.00
	\$ 400.00
Clothing (destroyed):	\$ 1,00.00
	\$ 200.00
Dishes:	\$ 600.00
	\$ 100.00
Storage unit	\$ 103.10
Gas to storage:	\$ 20.00

The landlords testified that the tenants' rental cheque was dishonoured and that she T.M.ed them on June 6, 2013 advising that she planned to move out as she had to find a cheaper unit by July 1, 2013. The landlords testified that on June 5, 2013 the tenant promised to replace her N.S.F. rental cheque the next day and that she would move out by June 15, 2013 so that the landlords could re-rent the unit as soon as possible. . On June 6, 2013 the tenant paid one half of the rent in cash. The landlords testified that in reliance upon the tenant's "notice" they immediately began looking for new tenants. The landlords testified that subsequently the tenant promised to be moved out by June 15, 2013. On June 15, the landlords discovered that the tenant had not move out and at her request they returned all of her security deposit to enable her to secure a new unit. That cheque was cashed by the tenant on June 18, 2013. The landlords testified that the tenant promised that she would be out by June 21, 2013. She confirmed this on June 18 by way of a text message. The landlords noticed that the tenant had not moved on June 20th but on that day the tenant promised to be moved out by 3:00 PM on the 21st. The landlord testified that they reminded the tenant by T.M. on June 21<sup>st</sup> that they had arranged for painters to arrive on 3:00 PM as they had re-rented the unit. The tenant responded that she would move out in time. The landlords testified that on June 21 at 4:15 PM the tenant had not moved nor had she begun to pack. Instead she left the unit promising to return with movers in one half hour. Meanwhile, the landlords testified that with the tenant's permission the landlords packed all of the tenant's belongings, after washing her laundry and some of her dishes. They testified that they did so carefully. They moved all of her belongings including furniture into their dry garage. The tenant who had promised to return in one half hour did not come back to the unit until the next morning whereupon she claimed she could not get into the suite. The landlords went through the suite, garage and all of the tenant's belongings in the presence of the tenant on June 22. The landlords testified that the tenant came back several times but did not remove all of her belongings until June 23, 2013 when her

boyfriend arrived with his truck. The landlords testified that they helped her move and witnessed her boyfriend spreading her belongings on the ground in the rain at the storage unit. The landlords denied that there ever was any animosity between them and the tenant nor aggression. In fact the landlords testified that their children played together and that they often baby sat the tenant's child. The landlords claimed for cleaning expenses, labour for assisting with the move, repair costs, missing items, and loss of rent as follows:

Cleaning the unit	\$ 187.00
Carpet cleaner rental	\$ 51.47
Blue box replacement	\$ 46.46
Paint (1/3)	\$ 59.76
Blind and cabinet repair replacement	\$ 54.17
Compost bucket	\$ 8.94
Labour for landlord to help moving,	
Packing repairs	\$ 300.00
Labour for landlord to help moving	
And cleaning	\$ 115.00
Friend of landlords labour moving	\$ 20.00
Unpaid rent for 6 days (June 15 through 21)	\$ 180.00
Replace carpet patch	\$ 157.50
Smoke detector	\$ 27.50

### Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

To claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the claimant must satisfy these components below:

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I found the landlords' testimony to be cogent, succinct, logical and given in a very straightforward manner. I find that the tenant did not tell the truth when she attached a written statement dated June 21, 2013 to her application for dispute resolution in which she stated "I have not received my damage deposit back." At the hearing she testified that she had in fact already received the deposit back well before the date of her statement, requested so she could pay her new landlord. Not only is her statement false but it's also clear by her own testimony that she had not found a new unit for two months after moving out and therefore the premise for asking for the return of the deposit was equally false. The tenant's claim that she did not return to the unit because she was afraid of the male landlord makes no sense when considering that she gave him the key to her unit and allowed him to pack and to help her move out. The tenant was in breach of sec 45 of the Act and by advising the landlords on June the 6<sup>th</sup> that she intended to move out on July 1, the 15<sup>th</sup> and then ultimately the 21<sup>st</sup>. The tenant was required to give 30 full days notice of her intention to move out. Accordingly the tenant's claim that she felt pressured to move out after she failed to pay all of the rent and gave short notice is illogical. I find it illogical that the tenant made decisions to discard her valuable possessions based upon pictures text messaged to her by her ex boyfriend. In the context of the falsehoods, and the contradictions all in all I find that the tenant's testimony was, inconsistent, embellished and simply illogical. Her explanation for what happened makes no sense. I have weighed her testimony against that of the landlords and determined that I prefer that of the landlords' wherever there is any inconsistency. Furthermore the tenant has not supplied any documentation proving her loss nor explanation as to why her boyfriend is entitled to claim for any lost wages. I find that all of the losses claimed by the tenant were likely sustained as a result of her own negligence or fault in failing to pay her rent, seeking to end the tenancy earlier than permitted, not following through with her own stated intentions, moving in haste and not the responsibility of the landlords because of any breach of the Act, tenancy or other liability at law. I find that the landlords had not damaged the tenant's belongings but if they were damaged that occurred likely because of the carelessness by which the tenant moved out. I find that the tenant has not proven on the balance of probabilities that the landlords caused any of her losses. I have therefore dismissed all of the tenant's claims.

Turning to the landlords' claims I find that there was no agreement by the tenant to pay for the landlords' labour for moving and packing her belongings. I therefore do not allow any of those claims. I have halved the claims where those costs are interwoven with cleaning and repair costs. I have also disallowed the landlords' claim for the cost of their friend's labour for moving. The tenant did not challenge any of the landlords' claims and I find them to be credible. I find that the damage, cleaning and losses

claimed were beyond normal wear and tear. I therefore allow all those claims. I also allow the claim for loss of rent for the 6 days the tenant continued to reside in the unit beyond what she paid for. I find that the landlords have proven a claim totalling \$ 980.30. As the landlords have been successful in this matter, I find pursuant to s. 72 of the Act that they are also entitled to recover the \$50.00 filing fee for this proceeding.

### Calculation of Monetary Award

Cleaning expense	\$ 187.00
Carpet cleaner rental	\$ 51.47
Blue box and green bin replacement	\$ 46.46
Painting expenses (1/3)	\$ 59.76
Blinds and supplies	\$ 54.17
Compost bucket replacement	\$ 8.94
One half labour moving and repairs	\$ 150.00
One half moving and cleaning	\$ 57.50
Unpaid rent (6 days)	\$ 180.00
Estimate for carpet patching	\$ 157.50
Smoke detector broken by tenant	\$ 27.50
Filing Fees for the cost of this application	\$ 50.00
<b>Total Monetary Award</b>	<b>\$ 1,030.30</b>

### Conclusion

In summary I ordered that the respondent pay to the applicants the sum of \$ 980.30 in respect of this claim plus the sum of \$ 50.00 in respect of the filing fee for a total of **\$ 1,030.30**. I grant the landlords a Monetary Order in the amount of **\$ 1,030.30** and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all other claims made by the landlords and all of the tenant's claims.

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 30, 2013

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Residential Tenancy Branch