



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 23, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. Upon review of the Tenant's evidence the Landlord's indicated that they had not received copies of the e-mails which were submitted to the *Residential Tenancy Branch* by the Tenant.

Section 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that in order for evidence to be considered it must be served upon the *Residential Tenancy Branch* and the other party. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Landlords have not received copies of the e-mail evidence submitted by the Tenant I find that evidence cannot be considered in my decision. I did however consider the Tenant's testimony relating to those e-mails and all other documentary evidence.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation?

Background and Evidence

The Tenant testified that just prior to June 25, 2013; she initiated contact with the Landlords to negotiate renting a unit they had advertised on the internet. She viewed the suite on June 25, 2013, negotiated the terms of the tenancy and provided reference check information. The Landlords checked her reference that evening and agreed to rent the unit to her. They made arrangements to meet and sign the lease after the weekend when the Landlords would be back in town.

The Tenant stated that she brought a friend along to the meeting with the male Landlord on July 4, 2013 and that they continued their negotiations and entered into a discussion about the possibility of painting the cupboards because they were three different colors. They completed and signed the written tenancy agreement and the Tenant gave the Landlord her cheque of \$1,050.00 which was half a month's rent for July 15 – 31, 2013 plus the security deposit of \$525.00. Then the next day, July 5<sup>th</sup>, 2013, the male Landlord called her to say they had changed their mind and did not want to rent to her. She had a discussion with him and told him that painting the cupboards was not a deal breaker and by the time the call was about finished he had indicated that they would continue with the tenancy. Then shortly after, the female Landlord called her to tell her the deal was off and they would not be renting to her.

The Landlords testified and confirmed that their initial contact was June 23, 2013, and they showed the Tenant the suite on June 25, 2013. They discussed the terms of the tenancy, conducted reference checks, and they completed and signed the tenancy agreement on July 4, 2013. The Tenant provided him with a cheque for a half month's rent and the security deposit.

The Landlord indicated that during the meeting on July 4, 2013 he had about fifteen minutes of conversation with the Tenant's friend who was a third party and not a party to the tenancy. He said that the friend kept analyzing the suite and had a conversation about painting the cupboards. This conversation occurred before and after the tenancy agreement was signed and payment accepted from the Tenant.

The male Landlord argued that they were making numerous concessions with this tenancy. He said that after he discussed this situation with the female Landlord they decided that it would not be a good deal for them to proceed with the tenancy and they chose to cancel the tenancy agreement. The male Landlord said he was of the opinion that the Tenant did not suffer any hardship by them cancelling the tenancy because this occurred at the beginning of the month.

The female Landlord indicated that her involvement was to stand firm in cancelling the tenancy because the male Landlord was not standing firm. She did call the Tenant a

few minutes after the male Landlord called and she told the Tenant that she felt it would not be a positive relationship so they decided to cancel it. Throughout that conversation the Tenant continued to try to negotiate with her but she held firm. She indicated that she was also of the opinion that the Tenant's claim was unreasonable and noted that no payment had been received because they did not cash the Tenant's cheque and later returned it to her.

In closing, the Tenant indicated that there were not numerous concessions because some of the items were being offered by the Landlord, like the new stove. She argued that these were simply negotiations and the Landlords could say no at anytime. She stated that painting the cupboards was not a deal breaker and that she really liked the unit. Her claim is to compensate for the stress and inconvenience she had to undergo to find another unit.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Upon review of the foregoing, I find that the parties had capacity and entered into and signed a written fixed term tenancy agreement that was set to begin July 15, 2013, and switch to a month to month tenancy after January 31, 2014, for the monthly rent of \$1,050.00. The tenancy agreement was perfected when the Landlord accepted a cheque as payment for the security deposit and July 2013 rent.

Sections 46, 47, 48, and 49 of the Act outline the conditions when a landlord may end a tenancy, such as: when rent is not paid, the landlord has cause, the tenant's employment with the landlord has ended, or the property will be used by the landlord. Each condition or section of the Act requires that the Landlord follow stipulated procedures in providing proper written notice to end the tenancy in accordance with the Act. There are no provisions which allow a landlord to unilaterally change their mind and cancel a tenancy agreement, without notice.

Notwithstanding the Landlords' assertion that the amount claimed by the Tenant is excessive, I find the amount to be reasonable. I make this finding in part because the Act provides that when a landlord gives notice to end a month to month tenancy they must provide the tenant one month's notice for cause, or if it is for landlord's use they must provide two months notice and financial compensation equal to one month's rent. In this case the Tenant had secured a six month lease only to find out the next day the lease was unilaterally cancelled, in breach of the Act. I have no doubt that if the tables were turned and the Tenant attempted to cancel a fixed term lease the Landlords would be seeking compensation for any losses they may have suffered.

Based on the above, I find the Tenant has met the burden of proof that the Landlords breached the Act by unilaterally cancelling her tenancy and that this breach caused her to suffer undue stress and inconvenience of having to renegotiate another lease. Accordingly, I award the Tenant compensation in the amount of **\$1,050.00**.

The Tenant has been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

#### Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,100.00** (\$1,050.00 + \$50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 29, 2013

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Residential Tenancy Branch

