



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

This hearing was convened as the result a Review Consideration decision on a previous decision from the original hearing.

I note that there was significant reference to a previous decision dated July 30, 2013 from a dispute resolution proceeding between these two parties. In particular, the landlord submitted that the previous hearing had determined that the tenants did not have the right to end the tenancy due to any emergency situation.

In her decision the Arbitrator stated: "I have not made any finding in relation to the right of the tenant's to end the tenancy in the way that they did; that would be related to any claim made by the landlord."

I accept that I am bound by the following findings made by the Arbitrator that may have some impact on the issues in this Application:

- The tenancy ended on June 3, 2013;
- The tenants provided the landlords with their forwarding address on June 3, 2013;
- The landlords filed their Application for Dispute Resolution seeking to claim against the deposits within 15 days of both the end of the tenancy and receipt of the tenants' forwarding address;
- That there was no evidence of confirmation of gas leaks after May 13, 2013;
- That the deadbolt was repaired by May 4, 2013;
- That the access points for rodents accessing the attic was repaired on May 18, 2013; and
- That all remaining requested repairs were trivial.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for utilities; for house and yard clean up; for all or part of the security and pet damage deposits and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords provided into evidence a copy of a tenancy agreement signed by the parties on March 14, 2013 for a month to month tenancy beginning on April 15, 2013 for a monthly rent of \$900.00 due on the last day of each month with a security deposit of \$450.00 and a pet damage deposit of \$150.00 paid.

The tenants provided into evidence a copy of a letter dated May 14, 2013 from the tenants to the landlords. The letter gives the landlord 24 hours to address some emergency repairs and 1 week to address minor or non-emergency repairs.

In the letter the tenants identify the emergency repairs to be repairing the front door deadbolt and dealing with the squirrel in the attic. The letter identifies the non-emergency repairs as those required for: the bathtub; the hood fan; the washing machine; tripping hazards on the back deck; the kitchen sink; a key to the backdoor; the base of toilet requiring caulking; the tub and shower requiring caulking; and replacement of the fire alarms.

The letter closes by indicating that if the landlords do not take care of these issues by the dates prescribed by the tenants they will take further action with the Residential Tenancy Branch. The tenants submitted an Application for Dispute Resolution on May 17, 2013. Their Application sought orders to have the landlord complete emergency repairs; reduce rent for repairs not completed; compensation for damage or loss; for the cost of emergency repairs and to recover their filing fee.

By the time the hearing was held for this Application on June 17, 2013 the tenants had already vacated the rental unit and the decision resulting from the hearing dealt only with the tenants' requests for compensation and for return of their deposits.

The tenants testified that they had determined they were in an unsafe environment and felt their only option was to vacate the rental unit as soon as possible. The tenants gave the landlord notice on May 31, 2013 that they would be moving out as soon as possible by voice message; then gave the landlord a further notice of their intention on June 1, 2013 and vacated by June 2, 2013 and returned keys and completed the move out condition inspection with the landlord on June 3, 2013.

The tenants testified that they determined they were in an emergency situation on May 31, 2013 after they had received legal advice, including information from the Residential Tenancy Branch (RTB) website and publications. During the hearing I noted specifically "A Guide for Landlords & Tenants in British Columbia" published by the RTB may have some information the tenants referred.

The landlords seek compensation from the tenants for the loss of rent for the month of June 2013 in the amount of \$900.00 resulting from the tenants' failure to provide sufficient and adequate notice to end the tenancy in accordance with the *Act*. The landlords also seek compensation for utilities in the amount of \$70.84 (77 days at \$0.92 per day) for the period April 15, 2013 to June 30, 2013.

The tenants agree they owe the landlord utilities for the period from April 15, 2013 to June 1, 2013 or for the period of time they actually had possession of the rental unit. The tenants submit they should be required to pay only \$42.32. (46 days at \$0.92 per day).

The landlords seek compensation also for the tenants' failure to cut the grass during or at the end of the tenancy. The landlords submit due to the length of the grass it had to be cut 3 times at a cost of \$50.00 per cutting. The tenants agree they failed to cut the grass but believe it only would have required 2 cuts.

In addition the landlords seek compensation in the amount of \$150.00 for cleaning up dog feces; holes in the yard; hair; and for a chewed fence. The landlord submitted photographs showing one location with dog feces; and one hole in the ground; and one small spot of a fence with marks on it. The tenants submit that there at most, two locations where they had left dog feces and dispute the holes and damage to fence.

The landlords seek \$75.00 for 3 hours of cleaning in the interior of the rental unit. The landlord provided photographic evidence of the cleaning required including floors with substantial amounts of hair and appliances that required surface cleaning. The tenants submit that they left the rental unit cleaner than when they started the tenancy. The tenants provide photographs showing the overall interior of the rental unit. These photographs did not provide the same detail of the condition as the landlords' photographs.

### Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

“A Guide for Landlords & Tenants in British Columbia” page 31 states under section 14.2 that if a landlord has breached a material term of the tenancy the tenant could decide to end the tenancy without giving full notice. The procedure for this is outlined as follows:

Before the end of the tenancy, the tenant must:

1. Provide the landlord written notice of the decision to end the tenancy indicating the breach;
2. Give a reasonable time for the landlord to correct the problems;
3. If need be, submit an Application for Dispute Resolution. The landlord may also submit an Application for Dispute Resolution seeking to set aside the tenant's notice. An arbitrator may decide in the landlord's favour if the term was not material; the breach was not serious enough to end the tenancy; or the tenant did not exercise all available options beforehand.

Despite the provision of a letter to the landlords on May 14, 2013 demanding repairs to be completed I find the tenants' letter failed to provide any indication of the tenants' intent to end the tenancy should the repairs not be completed within a reasonable time.

Further, as the tenants identified emergency repairs had been completed prior to May 18, 2013 and there has been no confirmed evidence of a gas leak after this time, I find the landlord had dealt with the emergency repairs identified by the tenants. I note the remaining repairs have been found to be trivial (as noted above from the July 30, 2013 decision).

As such, I find the landlord was no longer in breach of a material of the tenancy agreement at the time the tenants ended the tenancy by vacating the unit and returning keys on June 3, 2013. In addition, I find that despite submitting an Application for Dispute Resolution to have the landlord ordered to make repairs the tenants chose not to wait for the hearing and have the orders made they simply moved out of the unit.

As to the tenants' submission that they felt unsafe and that there was an emergency need to vacate the property I find that the tenants made this determination after they had obtained “legal advice” but that there is no evidence at the time the tenants vacated that there was any emergency situation or that the tenants were in any type of danger if they remained in the rental unit.

As such, I find the tenants failed to provide the landlords with a notice to end tenancy that complied with either Section 45(1) or Section 45(3) and the tenants still had possession of the rental unit up to June 3, 2013. As a result the tenants are responsible for the payment of rent for the month of June 2013.

As I have found the tenants are responsible for the rent for the month of June I also find that the tenants are responsible for utilities until the end of that same period as claim by the landlords in the amount of \$70.84.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In regard to the landlords claim for lawn mowing costs, I accept that both parties acknowledge the grass needed cutting. As to the amount of the landlord's claim, based on the photographic evidence and the landlord's testimony I find the lawn required 3 cuttings. If the tenants had been able to cut it to an acceptable level in two cuttings they should have done so prior to returning possession of the residential property to the landlord. I find the landlords are entitled to \$150.00 for lawn mowing.

Based on the photographic evidence of both parties I find the landlords have established the interior of the house required 3 hours cleaning and as such the tenants failed to comply with the requirements under Section 37 to leave the rental unit reasonable clean. I find the amount of \$75.00 to be reasonable compensation for this cleaning.

In regard to the landlords' claim for cleaning up dog feces; a chewed fence; hair; and holes in the property I find the landlord has established that there was a least one location of dog feces; one hole; and some scratches on a fence that may or may not have been cause by the tenants dog.

As such, I am satisfied that the landlord may have had to fill one small hole and remove one sample of dog feces from the yard. I am not satisfied that the landlord incurred a cost of \$150.00 to do so. In fact, I find that to complete both actions would have taken minutes to complete and there should be no cost involved. I dismiss this portion of the landlords' claim.

### Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1245.84** comprised of \$900.00 rent owed; \$70.84 utilities owed; \$150.00 lawn mowing; \$75.00 interior cleaning and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$645.84**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: February 20, 2014

---

Residential Tenancy Branch