



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VERNE RICHARD SCHIER &  
REBECCA JUNE SCHIER  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

LANDLORD: MND, MNR, MNSD, FF  
TENANT: MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for unpaid rent and utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of double the Tenant's security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on December 4, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by courier on October 9, 2013 which is not in accordance with section 89 of the Act. The Landlord said he received the Tenant's documents and was prepared to proceed with both applications. I accept the Tenant's service of documents to the Landlords.

The Tenant and the Landlords confirmed that they had received the other party's hearing packages.

### Issues to be Decided

#### Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Is there unpaid rent and/or utilities and if so how much?
4. Are the Landlords entitled to unpaid rent and/or utilities and if so how much?
5. Are the Landlords entitled to retain the Tenant's security deposit?

#### Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

This tenancy was to start on October 1, 2013 as a fixed term tenancy for 1 year with an expiry date of October 1, 2014. Rent was \$1,350.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$675.00 on October 1, 2013.

The Tenant said she did not move into the rental unit because items promised to her about the unit were not done. The Tenant said the front of the unit was not cleaned, lights had to be repaired and there was an odour from the shop which was part of the rental unit. The odour was a result of the shop floor being surfaced with epoxy so that the Tenant could use the shop for food catering. The Tenant said the odour was strong and came into the rental unit which make the unit uninhabitable.

The Tenant continued to say she met with the Landlord on October 2, 2013 and they agreed the Tenant would not move into the rental unit. The Tenant said there was no written agreement between the Landlord and her that the tenancy would end or not go ahead. The Tenant said that as a result of speaking with Residential Tenancy Branch she has made an application for the return of her October, 2013 rent in the amount of \$1,350.00, the return of double her security deposit in the amount of  $2 \times \$675.00 = \$1,350.00$  and for aggravated damages of \$1,000.00, because of the Landlord's actions

and because she had to move. As well the Tenant requested to recover the filing fee for this proceeding of \$50.00.

The Tenant provided photographs and emails of conversations with the Landlord to support her application.

The Landlord said there was no written agreement to end the tenancy although he did request one from the Tenant and the Tenant did not provide it. As a result the Landlord said he was unable to rent the unit to another tenant because the Tenant had a fixed term tenancy agreement. The landlord also said the Tenant did not return the keys until October 20, 2013. The Landlord continued to say that he advertised and showed the rental unit to a number of potential tenants but was unable to rent the unit until February 1, 2014. Consequently the Landlord said he is applying for unpaid rent for each month of November and December, 2013 and for January, 2014 in a total amount of \$1,350.00 X 3 = \$4,050.00. As well the Landlord said there are unpaid utilities from October, 2013 to December, 2013 in the amount of \$341.30 and for December, 2013 to February, 2014 in the amount of \$586.97. The Landlord said he is claiming for the unpaid utilities as he believes the Tenant is responsible for them under the fixed term tenancy agreement.

In addition the Landlord said there was \$320.00 in repairs to the roof and cleaning costs of \$121.00 to prepare the unit for the tenancy. The Landlord provided a paid receipt for \$300.00 for roof repairs and he said \$20.00 was for his labour to fill holes in the roof. As well the Landlord provided a receipt for cleaning the unit dated September 30, 2013 for \$121.00. The Landlord said his total claim is \$5,419.27.

The Landlords also requested to retain the Tenant's security deposit of \$675.00 and to recover the filing fee of \$50.00 for this proceeding.

The Tenant said the Landlord did not do the repairs that he promised to do and the unit had a strong odour of epoxy in it so on October 2, 2013 the Landlord and she agreed not to continue the tenancy. As a result the Tenant said she is not responsible for any rent or utilities and the Landlord is responsible to return her October, 2013 rent of \$1,350.00 as well as double her security deposit of \$1,350.00. The Tenant continued to say this situation was very difficult for her and the move cost her money so the Tenant believes the Landlord should pay her \$1,000.00 in aggravated damages.

The Landlord said the Tenant had her belongs in the unit until October 4, and she did not return the keys until October 20, 2013 so he could not have access to the unit without the Tenant's consent. As well the Landlord said that he has lost income because he could not get another tenant into the unit until February 1, 2014 therefore the Landlord said the Tenant is responsible for rent and utilities.

The Tenant said in closing that she does not owe the Landlord anything because she did not live at the rental unit and she believes the Landlord owes her \$3,200.00 in claims for her application.

The Landlord had no additional remarks in closing.

The Parties were given the opportunity to settle this dispute on their own terms and the Landlord did make an offer, but the Tenant declined it and requested the dispute go to decision.

### Analysis

Section 16 of the Act says the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this situation the Tenancy agreement was signed on August 26, 2013 and a security deposit and the October, 2013 rent was paid on October 1, 2013. I find the tenancy agreement is valid and a fixed term tenancy with and expiry date of October 1, 2014 is valid and is in effect.

Section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the **written agreement** of the Landlord.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further Section 7(2) of the act says (2) a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant did not give the Landlords proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent. As well the Landlords and the Tenant may have had a verbal agreement to end the tenancy, but it was not in writing therefore the terms were not clear. Consequently I find the Tenant is responsible for a portion of the Landlord's lost rental income. As section 7(2) states a

party making a claim must do whatever is reasonable to minimize the claim; therefore I find that it would be reasonable to re-rent the unit within two months after the Tenant moved out. I award the Landlord the November, 2013 rent of \$1,350.00 and the December, 2013 of \$1,350.00 as the Tenant had control of the unit in October, 2013 and the Tenant did not give the Landlord proper notice to end the tenancy even though the Tenant was asked to provide the Landlord with a mutual agreement to end the tenancy. In addition I award the Landlord the utilities for the time period of October to December, 2013 in the amount of \$341.30 and I award  $1/3$  of the utilities for December to February, 2014 utilities in the amount of  $\$586.97 / 3 = \$195.65$  to represent the utilities for the month of December, 2013.

Further I accept the Landlord's testimony and evidence of a paid receipt for the roof repairs. I award the Landlord \$300.00 for roof repairs and \$20.00 for the Landlord's labour to fill holes in the roof.

With respect to the cleaning bill of \$121.00 this was prior to the tenancy and it was in preparation for the tenancy therefore I dismiss this claim without leave to reapply as this was the responsibility of the Landlord.

The Tenant claim for unpaid rent is unfounded as she signed a fixed term tenancy agreement which made her responsible for the rent until the expiry date on the tenancy agreement and she had belongings in the unit until October 4, 2013. Consequently I dismiss without leave to reapply the Tenant's claim for the return of the October, 2013 rent in the amount of \$1,350.00.

Further for a Tenant to be successful in an application for double the return of their security deposit the Landlord must not have returned the security deposit or made an application to retain the security deposit within 15 days of the end of the tenancy and or 15 days after receiving the tenants forwarding address in writing. The Landlord has made an application on December 4, 2013 and the technical ending date of the tenancy is October 1, 2014 therefore the Landlord is well within the time limits of Section 38 of the Act for the handling of the security deposit. Consequently I dismiss the Tenant's application for double the return of her security deposit without leave to reapply.

With respect to the Tenant's application for aggravated damages of \$1,000.00, I have reviewed the evidence and testimony and I find the Tenant made the choice to move out of the rental unit therefore the costs and inconvenience of moving is the responsibility of the Tenant. I dismiss without leave to reapply the Tenant's claim for aggravated damages of \$1,000.00.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Loss rent:	\$ 2,700.00
	Unpaid Utilities	\$ 536.95
	Roof repairs	\$ 320.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 3,606.95
Less:	Security Deposit	\$ 675.00
	Subtotal:	\$ 675.00
	Balance Owing	\$ 2,931.95

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of the filing fee for her application that she has already paid.

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#### Conclusion

A Monetary Order in the amount of \$2,931.95 has been issued to the Landlords. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without 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: March 24, 2014

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Residential Tenancy Branch

