



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: OPR, MND, MNR, MNSD, MNDC  
TENANT: CNR, MNDC, ERR, PSF, LRE, FF

### Introduction

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

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property and to retain the Tenants' security deposit.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to do emergency repairs and general repairs to the unit site or property, for the Landlord to provide services and facilities, to restrict the Landlord's right of entry into the rental unit and to recover the filing fee.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on March 17, 2014 in accordance with section 89 of the Act.

At the start of the conference call the Tenant phoned in late and said she had moved out of the rental unit and was withdrawing her application. The Tenant left the conference call immediately after withdrawing her application.

I accepted the Tenant's withdrawal of their application.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is there damage to the unit site or property and if so how much?
5. Is there a loss or damage under the Act, regulations or tenancy agreement and if so how much?

6. Is the Landlord entitled to compensation for damage to loss and if so how much?
7. Is the Landlord entitled to retain the Tenants' security deposit for unpaid rent?

### Background and Evidence

This tenancy started on July 13, 2013 as a 6 month fixed term tenancy. Rent is \$1,180.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$590.00 in advance of the tenancy.

The Landlord said that the Tenants had unpaid rent for February, 2014 in the amount of \$1,180.00. As a result of the unpaid rent the Landlord gave the Tenants a 10 Day Notice to End Tenancy for unpaid rent on February 4, 2014 by personal delivery. Further the Landlord said the Tenants have not paid the March 2014 rent of \$1,180.00 as well. The Landlord said the female Tenant may have moved out of the unit, but she is not sure if the male Tenant has moved out of the unit. The Landlord said if her application is successful she is requesting an Order of Possession for as soon as possible. In addition the Landlord said she is requesting a total of \$2,360.00 of unpaid rent and the following damages.

The Landlord said she is seeking the following damages:

- The \$50.00 filing fee for this proceeding.
- \$1,960.00 for loss rental in the lower unit in the rental complex as she could not rent it because of smoke issues coming from the Tenants' rental unit.
- Estimated court costs of \$80.00.
- Estimated Bailiff costs of \$3,500.00
- Estimated moving costs of \$622.17
- Estimated clean up and ozone treatment costs of \$1000.00
- Estimated clean up costs of \$250.00
- Estimated carpet replacement costs of \$300.00
- Estimated costs to replace the stove of \$500.00
- Estimated repair costs of \$250.00
- Lost rental income for upper unit for April, 2014 of \$1,180.00
- Lost rental income for the lower unit for April, 2014 of \$980.00

The Landlord said her total claim is \$12,982.00

The Landlord continued to say she was unable to rent the lower unit because the Tenants' smoked in the upper unit and the smoke smell drifted into the lower unit which resulted in new tenant not wanting to move in to the lower unit. The Landlord she submitted a letter from a Realtor confirming the smoke smell in both units and the Landlord said she submitted affidavits for a previous hearing indicating potential tenants did not move in because of the smoke smell in the lower unit. The Landlord thought the information from the previous hearing would be forwarded to this hearing, but the information does not carry forward from one hearing to another hearing therefore the

affidavits were not available for this hearing. The Landlord said the tenancy agreement states no smoking in the rental unit.

The Landlord said in closing this is a very frustrating process and she believed the process favours the tenants.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, Tenants must pay the overdue rent or apply for dispute resolution. The Tenants did apply to dispute the Notice to End Tenancy within the time limits, but the Tenants withdrew their application therefore under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant has not paid the overdue rent and have withdrawn their application to dispute the Notice to End Tenancy. 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 48 hours after service of it on the Tenants.

Section 26 (1) of the Act 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

I accept the Landlord's testimony and evidence that there is unpaid rent of \$1,180.00 for each month of February and March, 2014 in the total amount of \$2,360.00 and I award this claim to the Landlord.

Further the Landlord has requested lost rental income for the lower suite in the rental complex because of the smoke smell originating in the Tenants suite contaminated the lower unit so no one would rent it. The Landlord is requesting the amount of \$980.00 for each month of February and March, 2014 for lost rental income for the lower rental unit. I have reviewed the Landlord's evidence of the Realtor letter and I accept there may be a smoke smell in the lower unit, but this does not prove potential tenants declined the rental of the unit solely because of the smoke smell. As there is no direct evidence to prove the lower could not be rented solely because of the smoke smell which is allegedly caused by the Tenants, I dismiss without leave to reapply the Landlord's request for loss rental income of the lower unit for February and March, 2014 in the amount of \$1,960.00.

With respect to the Landlord's claim for lost rental income for April, 2014 the Landlord said she thought she may be able to rent the units starting April 1, 2014; therefore I dismiss the Landlord request for loss rental income for April, 2014 with leave to reapply if the repairs and clean up take longer than the Landlord thinks and rental income for April, 2014 is actually lost.

For a monetary claim for damage or 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.

The items in the Landlord's claims that are estimates or quotes to do work, but the work has not been done or paid for are dismissed as claims that are not proven or verified are not successful claims. Consequently, I dismiss with leave all the Landlord's claims that are listed above as estimated costs which are not paid.

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

	Rent arrears:	\$2,360.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,410.00
Less:	Security Deposit	\$ 590.00	
	Subtotal:		\$ 590.00
	Balance Owing		\$ 1,820.00

### Conclusion

An Order of Possession effective 2 days after service of the Order on the Tenants and a Monetary Order in the amount of \$1,820.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: March 25, 2014

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Residential Tenancy Branch

