



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords on February 12, 2014, to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Tenant J.F. appeared at scheduled teleconference hearing on behalf of the Tenants and stated that G. F. was not able to attend. Therefore, for the remainder of this decision, terms or references importing the singular for the Tenants shall include the plural and vice versa.

The parties appeared, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. 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, and respond to each other's testimony. 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

Are the Landlords entitled to a Monetary Order?

### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on April 1, 2012 and was originally scheduled to end on March 31, 2013. A subsequent fixed term agreement was entered into which was set to expire on March 31, 2014. The Tenants have resided in the building since 2009. The

Tenants were required to pay rent of \$1,265.00 plus a flat rate of \$88.00 for hydro on the first of each month. On December 1, 2009 the Tenants paid \$600.00 as the security deposit and on January 1, 2010 they paid \$600.00 as the pet deposit. On December 31, 2013 the Tenants gave notice to end the tenancy, effective January 31, 2014, via e-mail. The parties conducted a walk through inspection and completed condition inspection report forms at move in December 1, 2009 and at move out February 1, 2014.

The Landlords submitted evidence in support of their claim which included a copy of the tenancy agreement, the move in and move out condition inspection report forms, a receipt for carpet cleaning, and copies of e-mails and letters between the parties.

The Landlords testified that they responded to the Tenants' e-mail notice to end their tenancy and informed them of their responsibility to for the full term of the lease. They began advertising the rental unit immediately and informed the Tenants' of their obligations again in a letter dated January 10, 2014. The Landlords indicated that January was a difficult time to find new tenants because the university year was almost at an end. They were not successful in finding new tenants on their own so they hired a property management company who secured a new tenant effective June 1, 2014.

The Landlords submitted that the Tenants signed the move out condition inspection report form agreeing to have their security and pet deposits applied to February unpaid rent and hydro, and agreeing that they owed money for carpet cleaning and \$50.00 for the stove door repair. After the deposits were applied it left a balance owing of \$360.50 ( $\$600.00 + \$600.00 - \$1,265.00 - \$88.00 - \$157.50 - \$50.00$ ). In addition the Landlords are seeking to recover the lost rent and hydro for March 2014, \$1,353.00 ( $\$1,265.00 + \$88.00$ ) plus \$50.00 for a broken toilet handle that was not noticed during the walk through inspection; the \$50.00 filing fee; and \$22.47 for registered mail costs.

The Tenant testified and confirmed that they attended the move out inspection and agreed to have their deposits applied to the outstanding rent, carpet cleaning, and broken stove door. The Tenant confirmed they did not have the carpets cleaned when they vacated the unit. The Tenant argued that they were not aware that the toilet handle was broken and argued that it must have been broken after they left.

The Tenant confirmed that they gave notice to break their lease early. They were disputing the Landlords' claim for additional rent, hydro, and losses because they felt they needed to find another place to live that would allow them to keep their dog. The Tenant stated that they received a dog as a Christmas gift and they knew the Landlords wanted to have the building a dog free building. They wanted to keep the dog so they began to look for another place and once they found a place they liked they broke their

lease. The Tenant confirmed they had not been served an eviction notice and argued that they needed to move when they found a place so they could have some control instead of being evicted without having a place to go to.

In closing the Landlords stated that the Tenants had a dog when they first occupied the building in 2009 but that dog passed away. The Tenants then approached the Landlords for permission to have a cat, which was approved. The Tenants did not request permission to have another dog and there were no discussions about evictions. The Tenants simply gave notice to end their lease by e-mail while the Landlords were out of town.

### 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; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the end of the fixed term, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenants ended their lease January 31, 2014, prior to the end of the fixed term of March 31, 2014, which is in breach of section 45 of the Act. The Landlords were not able to re-rent the unit until June 1, 2014 and lost rent and hydro for February and March 2014. Accordingly, I award the Landlords two months' rent and hydro in the amount of **\$2,706.00** (\$1,265.00 + \$88.00 x 2).

Section 32 (3) of the Act provides that a tenant of a rental unit 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear

and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit carpet unclean and leaving damage to the oven door at the end of the tenancy. As per the foregoing I find the Landlords have met the burden of proof and I award them damages in the amount of **\$207.50** (\$157.50 + \$50.00).

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection.

The Landlords have sought to recover \$50.00 for repairing a broken toilet handle. There is no mention of the broken handle on the move out report and the Tenant disputes that the handle was broken during the tenancy. Accordingly, I find there to be insufficient evidence to support that the toilet handle was damaged during the tenancy; therefore, the claim is dismissed, without leave to reapply.

In regards to registered mail fees for bringing this application forward, I find that the Landlords have chosen to incur these costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Section 89 of the Act provides for various methods of service. Therefore, I find costs incurred due to a service method choice are not a breach of the Act. Accordingly, I find that the Landlords may not claim mail costs, and the claim is dismissed, without leave to reapply.

The Landlords have primarily been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid rent and hydro	\$2,706.00
Carpet cleaning & oven damage	207.50
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,963.50</b>
<b>LESS: Pet Deposit \$600.00 + Interest 0.00</b>	<b>-600.00</b>
<b>LESS: Security Deposit \$600.00 + Interest 0.00</b>	<b><u>-600.00</u></b>
<b>Offset amount due to the Landlords</b>	<b><u>\$1,763.50</u></b>

Conclusion

The Landlords have been awarded a Monetary Order for **\$1,763.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants 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: June 09, 2014

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Residential Tenancy Branch

