



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 31, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenants are entitled to an order permitting them to end their fixed term tenancy early?
- c. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a two year fixed term tenancy agreement that provided that the tenancy would commence on April 1, 2014, end on March 31, 2014 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$5000 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$2500 and a pet damage deposit of \$2500 on March 14, 2014. The tenants took possession on March 21, 2014.

The tenants testified the tenancy has been marred by significant problems with the rental unit that has caused them significant stress and they are seeking compensation in the sum of \$25,000 and an order that they be permitted to end the fixed term tenancy early. The landlord disputes the tenants' claims. The landlord submits they had made all requested repairs in a timely manner and have paid for the cost of the repairs.

### Law

This is a disputed claim between the parties. Section 45(2) and (3) of the Residential Tenancy Act provides as follows:

#### **Tenant's notice**

**45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and **has not corrected the situation within a reasonable period after the tenant gives written notice of the failure (my emphasis)**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Policy Guideline #16 includes the following:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. **If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord** (my emphasis). Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) as follows:

- a. The parties mutually agree to end the tenancy on March 31, 2015 and the tenants shall vacate the rental unit on or before that date.
- b. Provided the tenants vacate the rental unit on or before March 31, 2015 the landlord releases and discharges the tenants for all claims for loss of rent for the unexpired portion of the fixed term.
- c. The tenants release and discharge the landlord from all claims for compensation set out in the within Application for Dispute Resolution to the date of this hearing (December 8, 2014).
- d. The security deposit and pet damage deposit shall be dealt with in accordance with the Residential Tenancy Act.
- e. The landlord shall return to the tenants the post dated cheque dated April 1, 2015 to the end of the fixed term when the tenants vacate the rental unit.

**The settlement was read to the parties and each confirmed their agreement. As a result of the settlement I granted an Order for Possession effective March 31, 2015.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: December 08, 2014

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Residential Tenancy Branch

