



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application: MNSD; FF

Landlord's application: OPL; MND; MNR; MNSD; FF

### **Introduction**

This Hearing was convened to consider cross Applications. The Tenants applied for return of the security deposit and recovery of the filing fee from the Landlord.

The Landlord applied for an Order of Possession; a Monetary Order for unpaid rent and damages; to apply the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenants acknowledged service of the Landlord's Notice of Hearing documents and copies of the Landlord's documentary evidence, by registered mail, in November, 2014.

The Tenants stated that they mailed copies of their documentary evidence to the Landlord, via registered mail, on January 12, 2014. The Tenants provided the tracking numbers for the documentary evidence. The Landlord stated that she has not received the Tenant's documentary evidence. A search of the Canada Post Tracking system indicates that the registered documents are still being processed by Canada Post. I asked the Tenants why they waited so long to provide evidence, since they had filed their Application on July 15, 2014. The Tenants answered that the male Tenant was in a car accident in July, 2014, and that they got married in September, 2014, and so they were busy.

I explained to the Tenants that there are Rules of Procedure with respect to time lines for service of documents. Pursuant to Rule 3.11, I found that the Tenants unreasonably

delayed the service of their evidence and therefore it was not considered. I invited the Tenants to provide their evidence orally at the Hearing.

I have reviewed the Landlord's documentary evidence and both parties' oral testimony; however, **I refer to only the relevant facts and issues in this decision.**

### **Preliminary Matters**

It was established that the Tenants have moved out of the rental unit. Therefore the Landlord's request for an Order of Possession was withdrawn.

The female Tenant's last name has changed and therefore the Applications were amended to include her current last name.

### **Issues to be Decided**

- Are the Tenants entitled to return of the security deposit and pet damage deposit?
- Is the Landlord entitled to a monetary award for unpaid rent and damages to the rental unit?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on November 1, 2013. The tenancy agreement is a one year lease, ending on October 31, 2014. Monthly rent was \$1,550.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$775.00 and a pet damage deposit in the amount of \$250.00 at the beginning of the tenancy.

#### **The Tenants gave the following testimony:**

The Tenants stated that they received a 2 Month Notice to End Tenancy for Landlord's Use on April 25, 2014. The Tenants testified that they did not dispute the Notice and started moving out "at the end of May". They stated that they completed moving out of the rental unit on June 29, 2014, and returned the keys to the Landlord on June 30, 2014. They testified that they did not pay rent for the month of June, 2014, because of the compensation allowed by the Notice.

The Tenants testified that there was no Condition Inspection Report done at the beginning or the end of the tenancy. The Tenants stated that there was some damage to the rental unit which pre-dated their tenancy.

The Tenants stated that rent included hydro at the beginning of the tenancy. They testified that the Landlord was concerned about the cost of the hydro bills, and demanded that they pay for hydro in exchange for paying a lower rent. The Tenants agreed to put the hydro in their name. The Tenants testified that they made enquiries about the cost of hydro and were told by the hydro company that their charges were within the normal range and that the previous charges were indicative that the rental unit was vacant before the Tenants moved in.

The Tenants stated that they did not provide their forwarding address in writing to the Landlord.

The Landlord gave the following testimony:

The Landlord agreed that the Tenants were not required to pay rent for the month of June, 2014. She stated that the parties attended a “walk through” at the beginning of the tenancy and that she was there for a “walk through” at the end of the tenancy, but the Tenant CT did not show up.

The Landlord testified that the Tenants did not live in the rental unit for the month of June, 2014, and did not tell her that they were not living in the rental unit. She stated that this caused her concern because her insurance coverage might be impacted.

The Landlord seeks compensation, in the total amount of **\$1,174.81**, as follows:

1. The Landlord stated that the Tenants’ hydro usage was three times the normal amount compared to previous usage. The Landlord alleged that the Tenants may have been engaging in illegal activity which caused the hydro charges to spike. The Landlord’s monetary worksheet indicates that she seeks compensation in the amount of **\$230.00** for “hydro over-usage” which she had to pay before the Tenants put hydro in their name.
2. The Landlord stated that the Tenants had a cat, which peed on the floor, ruining the laminate and the subfloor. The Landlord testified that the laminate was 7 years old. The Landlord’s monetary worksheet indicates that she seeks compensation in the amount of **\$350.28** for the cost of replacing the laminate. The Landlord provided copies of receipts in evidence and a written statement from the new occupant.
3. The Landlord testified that the Tenants did not clean the rental unit before they moved out. She stated that the Tenants did not mow the lawn or do any weeding during the tenancy, contrary to the tenancy agreement. She stated that the Tenants left garbage and debris at the rental property. The Landlord seeks compensation for labour for pulling weeds, cleaning up, and gas for the truck (driving back and forth to the dump) in the total amount of **\$222.50**.

4. The Landlord stated that the Tenants broke the front right burner switch on the stove. She seeks an award in the amount of **\$145.14** for repairing the stove, which she testified was 5 years old. A copy of the invoice was provided in evidence.
5. The Landlord stated that the Tenants broke the door handle on the dishwasher. She seeks an award in the amount of **\$215.89** for repairing the dishwasher, which she testified was 5 years old. A copy of the invoice was provided in evidence.

The Landlord provided photocopies of photographs in evidence.

The Tenants gave the following response to the Landlord's submissions

The Tenants stated that they cleaned the house at the end of the tenancy. They testified that they got a text message from the Landlord, stating that she would not be returning their deposits, without arranging a walk through or meeting with the Tenants.

The Tenant CT stated that there was "no point" in giving any more testimony.

## **Analysis**

### **Regarding the Tenants' Application**

Section 38(1) of the Act provides:

**38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

(a) the date the tenancy ends, **and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[my emphasis added]

I explained to the Tenants that in this case, the Tenants did not provide the Landlord with their forwarding address in writing and therefore their application for return of the security deposit pursuant to Section 38(1) of the Act was premature. The Tenants'

application was premature and therefore I find that they are not entitled to recover the cost of the filing fee from the Landlord. The Tenants' Application is dismissed in its entirety.

I explained to the parties that the deposits would be dealt with nonetheless because the Landlord had filed an Application against the security deposit and pet damage deposit.

Regarding the Landlord's Application:

This is the Landlord's claim and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The parties were advised that the Notice to End Tenancy for Landlord's Use was not valid because a landlord cannot end a fixed term tenancy under Section 49 of the Act. In addition, the Landlord did not provide a reason for ending the tenancy on page two of the Notice, as required. However, the Tenants accepted the Notice and acted on it. The Landlord applied for a monetary award for unpaid rent; however, she acknowledged that she had agreed that the Tenants did not have to pay June's rent and she did not include that claim in her Monetary Worksheet. Therefore, this portion of her Application is dismissed.

Based on the testimony and documentary evidence provided, I find that it is likely that the laminate floor was damaged by the Tenants' cat. The Residential Tenancy Branch Policy Guidelines (the "Policy Guidelines") provide that when damage is found to be caused by a tenant, I may consider the useful life of a building element and the age of the item. The Landlord stated that the laminate floor was 7 years old. I find that the useful life of a laminate floor is 10 years. Therefore, I allow this portion of the Landlord's claim in the amount of **\$105.08** ( $\$350.28 \times 3/10$ ).

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. Based on the photographs provided by the Landlord, I find that the Tenants did not leave the rental unit in a reasonably clean condition at the end of the tenancy.

I have found that the Tenants did not comply with Section 37(2) of the Act. Section 67 of the Act provides me with the authority to determine the amount of, and order a party to pay, compensation to the other party. The Landlord provided a receipt for gas dated July 2, 2014; however, I find that the Landlord did not provide sufficient evidence that the gas purchased was used solely for the purpose of disposing of the Tenants' garbage and the weeds (for example, the Landlord did not provide evidence with respect to the number of kilometers travelled or the gas consumption of the vehicle per kilometer). The Landlord did not provide a copy of the receipt from the dump for the cost of disposing of the Tenants' garbage and the weeds. However, I am satisfied that the Landlord spent some time cleaning and gardening and therefore I allow this portion of her claim in the amount of **\$120.00** (6 hours at \$20.00 per hour).

Hydro was included in the rent at the beginning of the tenancy. I find insufficient evidence that the Tenants breached the Act, regulation or tenancy agreement with respect to this portion of the Landlord's claim. This portion of the Landlord's claim is dismissed.

Based on the evidence provided, I find that the Landlord has not provided sufficient evidence to prove her claim with respect to damage to the stove and dishwasher. The appliances are 5 years old. Pursuant to the Policy Guideline's determination of useful life of these appliances, they were half way through their useful life of 10 years. I find that there is insufficient evidence that damage to the handle of the dishwasher and the burner switch were deliberate and not as a result of normal wear and tear. This portion of the Landlord's claim is dismissed.

The Landlord has established a monetary award in the total amount of \$225.08. Her application had merit and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenants, for a total of **\$275.08**.

Sections 23 and 35 of the Act require landlords to complete Condition Inspection Reports at the beginning and the end of the tenancy. These Reports must comply with the requirements of Part 3 of the regulation. A "walk through" does not comply with Part 3 of the regulation. Section 38(5) of the Act provides that the right of the Landlord to retain all or part of a security deposit or pet damage deposit does is extinguished if the Landlord does not comply with Sections 23 and 35 of the Act. I find that the Landlord did not comply with Sections 23 and 35 of the Act and therefore, I order that the

Landlord return the security deposit and pet deposit to the Tenants, in the total amount of **\$1,025.00**.

### **Set off**

Pursuant to the provisions of Section 72(2) of the Act, I hereby set off the Landlord's monetary award against the deposits and order that the Landlord return the balance to the Tenants, calculated as follows:

Security deposit and pet damage deposit	\$1,025.00
Less Landlord's monetary award	<u>-\$275.08</u>
<b>TOTAL AMOUNT DUE TO THE TENANTS AFTER SET-OFF</b>	<b>\$749.82</b>

### **Conclusion**

I hereby provide the Tenants with a Monetary Order in the amount of **\$749.82** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 20, 2015

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Residential Tenancy Branch

