



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDC; RPP; OPT

### **Introduction**

This Hearing was convened in response to the Tenants' Application for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord return the Tenants' personal property; and for an Order of Possession for the Tenants.

Both parties attended the hearing and provided affirmed testimony. The hearing process was explained and the parties were given a full opportunity to be heard, to present evidence and to make submissions.

It was determined that the Tenants served the Landlord with the Notice of Hearing documents on February 15, 2015, and copies of their documentary evidence on February 23, 2015.

It was also determined that the Landlord served the Tenants with his rebuttal evidence on February 23, 2015.

### **Preliminary Matters**

At the outset of the Hearing, the Tenants made an oral request for an adjournment in order that their legal advocate could attend the Hearing. The Landlord objected to an adjournment. The Tenants also wished to adjourn so that the Landlord could have more time to consider their documentary evidence, which was served late. After some discussion between the parties, they agreed to proceed with the Tenants' application and the Tenants withdrew their application for an adjournment.

The Tenants' Application included a request for an Order of Possession; however, the Tenants confirmed that they do not wish to take back possession of the rental unit and therefore this portion of their Application is dismissed.

The Landlord stated that the Applicant MP was not his tenant because she did not sign the tenancy agreement; however, he agreed that MP was an occupant. The tenancy agreement provides for a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$100.00, for a total of \$800.00. The parties agreed that MP and the Tenant AN each gave the Landlord \$400.00, and that the Landlord returned \$400.00 to each of them.

The Act requires that a tenancy agreement be put in writing; however, the Act also defines a “tenancy agreement” as an oral agreement. In this case, I find that MP and AN were co-Tenants of the Landlord because the Landlord accepted a portion of the security deposit from MP and returned it to her at the end of the tenancy.

### **Issue(s) to be Decided**

- Are the Tenants entitled to a Monetary Order and, if so, in what amount?
- Should the Landlord be ordered to return the Tenants’ property to the Tenants?

### **Background and Evidence**

This tenancy began on August 29, 2014. Monthly rent was \$1,400.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$100.00 at the beginning of the tenancy.

No Condition Inspection Report, that meets the requirements of the Regulations, was completed at the beginning or the end of the tenancy.

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

The Tenants stated that on January 1, 2015, they gave the Landlord notice via text message that they were ending the tenancy effective February 28, 2015. They began moving their belongings out of the rental unit at the end of January, 2015. The Tenants paid rent for the month of February, 2015.

The Tenants stated that they wanted to have the ability to move out of the rental unit at their leisure and that they were leaving some items which they were selling at the rental unit. The Tenants testified that the Landlord sent a text to AN on February 5 or 6, 2015, that the items had been moved into the Landlord’s garage.

The Tenants testified that on February 10, 2015, the Tenant went to the rental unit and found that other people were occupying the rental unit. They stated that these people advised the Tenants that they had moved in on the previous weekend because the

Landlord was doing renovations in their own suite next door. The Tenants contacted the Landlord to reach a resolution, but were unsuccessful.

The Tenants testified that the Landlord returned their security deposit and pet damage deposit on February 10, 2015, by e-mail transfer, and that they returned the keys to the rental unit on February 15, 2015.

The Tenants seek to recover the cost of February rent from the Landlord because they paid February's rent and still had the keys to the rental unit until February 15, 2015, but no access.

The Landlord gave the following testimony:

The Landlord stated that he received a text message from AN on January 25, 2015, indicating that the Tenants would be moving out "over the next two weeks". He testified that MP sent a text on February 4, 2015, indicating that the Tenants were completing the cleaning of the rental unit. He stated that the parties did a "walk through" on February 5, 2015, at which time the Tenant AN asked for return of the deposits. The Landlord submitted that he believed the tenancy ended on February 5, 2015.

The Landlord stated that AN asked again about return of the deposits on February 9, 2015, and that he returned the deposits on February 10, 2015.

The Landlord stated that the Tenants were welcome to pick up the remainder of their belongings at any time and that they had been provided with the access code to the Landlord's garage on February 8, 2015, so that they could do so.

The Landlord testified that he did not benefit from moving the other occupants into the rental unit in early February, because he did not collect rent from them and because he did not start renovations on their suite during the month of February

**Analysis**

The Landlord has provided the Tenants with the access code to the garage where their possessions are available for pickup. During the Hearing, I made an Order that the Tenants retrieve their possessions by noon, Friday, March 13, 2015.

There was no dispute that the Tenants paid February's rent in full. Therefore, I find that the Tenants had **use and occupancy** of the rental unit for the month of February and that the Landlord did not have a right under the Act to take back possession until 1:00 p.m. on February 28, 2015. Black's law dictionary defines "occupy" as "To take or enter

upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession". In other words, there is no requirement for a tenant to live in the rental unit in order to "occupy" it.

Based on the testimony of both parties, I find that the Tenants are entitled to compensation for the period of time that they were restricted by the Landlord from using or occupying the rental unit, as follows:

Monthly rent	\$1,400.00
Divided by number of days in February	<u>/28</u>
Per Diem rent	\$50.00
Per Diem rent	\$50.00
February 6 – 28	<u>x 23</u>
TOTAL award	<b>\$1,150.00</b>

The Tenant's application had merit and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

The Tenants are ordered to pick up their possessions by noon, Friday, March 13, 2015.

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,200.00** 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: March 11, 2015

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Residential Tenancy Branch

