



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR, MND, MNDC, MNSD, FF  
MNR, MNDC, MNSD, OLC, ERP, RP, FF

### Introduction

This hearing was scheduled in response to 2 applications:

- i) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenants for a monetary order reflecting the cost of emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from June 10, 2014 to June 10, 2015. Monthly rent of \$1,000.00 was due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected. A 1 page /

double sided and very abbreviated version of a move-in condition inspection report created by the landlords, was completed with the participation of both parties.

By letter dated June 04, 2015, the tenants gave notice to end tenancy effective June 10, 2015. No form of move-out condition inspection report was completed. Subsequently, by letter dated July 20, 2015, the tenants informed the landlords of their forwarding address for the purposes of repaying their security deposit.

The landlord testified that new renters have been found for the unit effective from November 01, 2015. Further, while the landlord testified that advertising for renters was undertaken online, commencement of advertising was delayed as a result of certain cleaning and repairs that were required in the unit after the subject tenancy ended.

The tenants filed an application for dispute resolution on August 17, 2015. The landlords filed their application on October 05, 2015, and their amended application was later received by the Residential Tenancy Branch on October 09, 2015.

### Analysis

At the outset, the attention of the parties is drawn to the following particular sections of the relevant legislation:

#### **ACT**

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

#### **REGULATION**

Section 20: **Standard information that must be included in a condition inspection report**

Based on the documentary evidence and testimony, the various aspects of the respective applications and my findings are set out below.

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#### **TENANTS**

*Order instructing the landlord to comply with the Act, Regulation or tenancy agreement*

*Order instructing the landlord to make emergency repairs for health or safety reasons*

*Order instructing the landlord to make repairs to the unit, site or property*

In the absence of sufficient evidence, and in view of the fact that tenancy has now ended, the tenants' request for the above orders to be issued against the landlords is hereby dismissed.

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*\$350.00: miscellaneous painting and repairs*

In view of the conflicting testimony of the parties, the absence of the comparative results of proper move-in and move-out condition inspection reports, and in light of the absence of any receipts to support this aspect of the tenants' application, it is hereby dismissed.

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*\$100.00: mowing the lawn during the term of tenancy*

The landlords do not dispute this aspect of the tenants' application. Accordingly, I find that the tenants have established entitlement to the full amount claimed.

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*\$500.00: return of security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit, and must pay the tenant double the security / pet damage deposit.

In the circumstances of this dispute, I find that the landlords neither repaid the security deposit, nor filed an application to retain it within 15 days after being informed by the tenants of their forwarding address. Despite this, during the hearing the tenants testified that they waive their entitlement to the double return of their security deposit in the event I were to find that such an entitlement is established under the Act. The final disposition of the security deposit is addressed below.

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*\$50.00: filing fee*

As the tenants have achieved limited success with their application, I find that they have established entitlement to recovery of ½ the filing fee, or **\$25.00** (\$50.00 ÷ 2).

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**Total entitlement: \$125.00** (\$100.00 + \$25.00)

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## LANDLORDS

\$1,000.00: *loss of rental income for July 2015*

Section 45 of the Act addresses **Tenant's notice**, in part:

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.

I find that the tenants' letter of June 04, 2015, which instructed the landlords of their decision to end the fixed term tenancy on June 10, 2015, does not comply with the above statutory provisions. Specifically, in part, the effective date of the notice is earlier than one month after the date the landlords received the notice.

Section 7 of the Act addresses **Liability for not complying with this Act**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I am unable to conclude that cleaning and repairs required in the unit following the end of this tenancy, which the landlord claims delayed the commencement of efforts to mitigate the loss of rental income by advertising for new renters, were entirely the result of this particular tenancy. In part, this difficulty arises from the absence of comparative

results of proper move-in and move-out condition inspection reports. In the result, I find that the landlords have established entitlement limited to **\$500.00**, which is ½ of 1 month's rent under the tenancy agreement.

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\$813.75: *miscellaneous painting and repairs*

\$85.00: *carpet cleaning*

\$33.55: *replacement of stove burner*

\$199.00: *estimated cost to replace wash basin*

\$200.00: *plumbing repair of overflowing toilet (cash payment / no receipt)*

\$10.00: *guide slide and labour*

In the absence, variously, of receipts for all costs claimed, or the comparative results of proper move-in and move-out condition inspection reports, and in view of what I find is the older age of the unit and some of the items at issue (stove burner, wash basin), but in consideration also of photographs taken within and around the unit by the landlords and submitted in evidence, I find that the landlords have established nominal entitlement in the limited amount of **\$100.00**.

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\$120.00: *unit cleaning*

Section 37 of the Act addresses **Leaving the rental unit at the end of tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and.....

In the absence of the comparative results of proper move-in and move-out condition inspection reports, I find that the landlords have failed to meet the burden of proving that the tenants did not leave the unit "reasonably clean, and undamaged except for reasonable wear and tear." Accordingly, this aspect of the application is hereby dismissed.

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\$50.00: *filing fee*

As the landlords have achieved limited success with their application, I find that they have established entitlement to recovery of  $\frac{1}{2}$  the filing fee, or **\$25.00** ( $\$50.00 \div 2$ ).

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**Total entitlement: \$625.00** ( $\$500.00 + \$100.00 + \$25.00$ )

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Offsetting the respective entitlements, I find that the landlords have established a net claim of **\$500.00** ( $\$625.00 - \$125.00$ ). I **ORDER** that the landlords retain the tenants' security deposit in the full amount of \$500.00 as full satisfaction of this claim.

### Conclusion

The landlords are **ORDERED** that they may retain the tenants' security deposit in the full amount of \$500.00. This **ORDER** reflects the final adjudication of claims submitted by both parties.

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: October 29, 2015

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Residential Tenancy Branch

