



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0739207 BC LIMITED, DARCY CARR & MARTY URI  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

LANDLORD: MND, MNDC, MNR, MNSD, OPC  
TENANT: MNDC, PSF, LRE

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlord filed seeking an order of possession and a monetary order for unpaid rent, compensation for damages to the unit site or property, for loss or damage under the Act, regulations or tenancy agreement and to retain the Tenants' security deposit.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the Landlord to provide service and facilities and to restrict the Landlords right of entry to the rental unit.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on November 28, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on November 17, 2015, in accordance with section 89 of the Act.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

The Landlord said the Tenants moved out on November 30, 2015 therefore he has possession of the unit so their request for an Order of Possession is withdrawn.

The Tenants' application to restrict the Landlords right of entry is cancelled as well. This request is a concern of an ongoing tenancy and as this tenancy has ended this request is no longer an issue.

### Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Are the Landlords entitled to unpaid rent and if so how much?
3. Is there damage to the unit site or property and are the Landlords entitled to compensation if there is damage?
4. Is there loss or damage under the Act, regulations or tenancy agreement and are the Landlords entitled to compensation if there is loss or damage?
5. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are there services or facilities not provided to the Tenants and if so are the Tenants entitled to compensation?

### Background and Evidence

The Tenants said they had authorization from the Landlord to move into the unit on October 28, 2015, although the tenancy was to begin on November 1, 2015. There was no written tenancy agreement completed; therefore the tenancy is deemed to be a verbal month to month tenancy. The Landlord disputes that a tenancy existed because no tenancy agreement was signed. The Arbitrator told the parties that a month to month verbal tenancy does exist because the Landlord authorized the Tenants to move in to the rental unit and the Landlord has accepted a rent payment.

The Tenants said rent was \$775.00 as that is the amount on the November, 2015 rent receipt dated October 26, 2015. As well the Tenants submitted a witness statement from S.S. The witness statement says she paid the rent and the rent was \$775.00. The statement is not signed by the witness S.S. The Tenant said she believes the rent was \$775.00 because she wrote \$775.00 on the rental application during a phone call with the Property Manager M.U.

The Landlord said rent was \$850.00 as indicated by the email evidence dated September 28, 2015 to the Tenant and other emails to other tenants in the rental complex. The Property Manager said he issued the November, 2015 rent receipt for \$775.00 as a partial payment, but he did not write partial rent payment on the receipt. The Landlord said the rent in all his units is \$850.00 and his tenancy agreements say a temporary draft receipt will be given for rent payments made with cash. The Landlord submitted a tenancy agreement with another tenant but not for this tenancy.

No condition inspection reports were completed for this tenancy and the Tenants did not pay a security deposit as they said they did not like the condition of the unit on move in. The Tenant said they believe the Landlord changed the rental amount from \$775.00 to \$850.00 when they were preparing to move in.

The Landlord said he has amended his claim to \$566.21 as his original claim was made when the Tenants were living in the rental unit. The Landlord said he is claiming \$200.00 for the 4 day early move in for October, 2015. The Landlord said there was no discussion about a cost for moving in early with the Tenants but it was to help the Tenants out. The Landlord said the

Tenants had the use of the unit and they should now pay for it. In addition the Landlord requested \$75.00 for unpaid rent in November, 2015, the filing fee of \$50.00, mailing costs of \$48.21, lock replacement or rekeying of \$73.00 and carpet cleaning of \$120.00. The Landlord said he included an email from the locksmith indicating that \$73.00 would be the charge to change the locks. The Landlord continued to say he did not submit a paid receipt for the carpet cleaning.

The Tenants said the rental unit was in poor condition when they arrived for move in so they asked the Landlord if they could have their rent payment back and they would not move into the rental unit. The Tenants continued to say that the Landlord refused to give the money back so they gave the Landlord their notice to end the tenancy on November 1, 2015 for November 30, 2015. The Tenants said they felt that they were forced to rent the unit. The Tenants continued to say that the Landlord blocked the hydro from being turned on so the unit did not have heat or electricity during the month they rented it. The Tenants said the unit was uninhabitable because there was no heat and they could not cook. The Tenants submitted a letter from a friend saying the Tenants were living at her home since October 27, 2015. The letter is dated November 5, 2015. The Tenant said they did not live in the rental unit because there was no heat and no hydro. As well the Tenant submitted an email from the Landlord dated October 30, 2015 stating the Landlord will not authorize the connection of the hydro to the rental unit.

The Landlord said that he told the hydro company not to turn the power on because the Tenants did not sign the tenancy agreement and had not paid the security deposit. The Landlord said they had an agreement and the Tenants were backing out of it.

The Tenants continued to say that they were unable to living in the rental unit because it had no heat or power. As a result they just stored their belongings in the rental unit until they moved out.

As a result the Tenants have applied for compensation. The Tenants said they are requesting the return of their November, 2015 rent in the amount of \$775.00, their moving expenses of \$402.36 and additional living expenses for not having hydro in the rental unit in the amount of \$275.00. The Tenants said the Landlords were unreasonable about cancelling the tenancy and then blocking the hydro for the month that the Tenants had paid rent for.

The Property Manager said he is new to the job and even though he did not complete the rent receipt as a partial rent payment for November he said the Tenants knew the rent was \$850.00 because of the email and phone calls between the Tenants and the Landlords.

The Landlords said in closing that the Tenants did not complete their agreement therefore the Tenants are responsible for breaking the tenancy. The Landlord requested compensation of \$566.21 due to the Tenants not completing the tenancy agreement.

The Tenants said in closing the unit was dirty, the Landlord was unreasonable, there was no hydro and the Landlord changed the rent amount on move in. The Tenants' requested \$1,452.36 in compensation.

### Analysis

I have reviewed the written evidence submitted and the testimony that was given during the hearing and it is apparent that there are two different versions of what happened in this tenancy.

As a result my decision will be based on the evidence that I have in front of me and the balance of probabilities from the testimony.

The Landlord has requested compensation for the 4 days of rent in October, 2015 in the amount of \$200.00. The Landlord said the cost for an early move in was not discussed with the Tenants but the Landlord allowed the early move in as a good will gesture. I find that as there was no discussion or agreement about a cost for use of the unit prior to the tenancy beginning and that the Landlord and Tenants understood this was to help the Tenant out. The Landlord has not established grounds to receive compensation for rent for October 28 to October 31, 2015. Consequently, I dismiss the Landlords' claim for unpaid rent for October, 2015 in the amount of \$200.00.

Further although there is one email dated September 28, 2015 that indicates the rent is \$850.00, I find that the Tenants testimony, the witness S.S. statement and the November, 2015 rent receipt for \$775.00 does put into question if the rent was \$850.00 or \$775.00. There is only piece of evidence that I find reliable and that is the rent receipt. The Property Manager is a professional and therefore is required to know the responsibilities of a Landlord and how to complete rent receipts. I find that as the rent receipt dated October 26, 2015 indicate the rent for November, 2015 was paid; I find the rent amount was \$775.00. Consequently the Landlords' claim for additional unpaid rent for November, 2015 of \$75.00 which is the difference between \$850.00 and \$775.00 is dismissed without leave to reapply as the full rent of \$775.00 was paid.

The Landlord has requested \$73.00 for lock replacement and \$120.00 for carpet cleaning. As Landlord has not submitted paid receipt the Landlord has not proven a loss actually exists and he has not verified the amount of loss. Consequently I dismiss the Landlords' claims for lock replacement and carpet cleaning.

Further the Landlord has requested \$48.21 for reimbursement for mailing costs. All costs incurred for the hearing preparation including mailing costs are not eligible claims under the Act. Therefore I dismiss the Landlords' claim of \$48.21 for mailing costs.

In addition as the Landlord has been unsuccessful I order the Landlord to bear the cost of the filing fee of \$50.00 that he has already paid.

With respect to the Tenants application for moving expenses of \$402.36; moving expenses are costs decided by the Tenants and are incurred before a tenancy begins or after a tenancy is over. These costs are the responsibility of the Tenants as the Tenants are the ones who choose to move in to the rental unit or to move out of the rent; therefore I find the Tenants have not established grounds to be awarded moving costs. I dismiss the Tenants' request for moving costs of \$402.36.

With regard to the Tenants' claim for the return of the November rent of \$775.00. Section 26 of the Act says tenants must pay rent when it is due under a tenancy agreement whether it is written or verbal; therefore I find the Tenants are responsible to pay the rent of \$775.00.

Further section 27 Of the Act says a Landlord must not terminate or restrict a services or facilities that are material to a tenancy. The Landlord blocking the Tenants from connecting the hydro to the rental unit is a restriction of a service and is a material term of the tenancy. As a result I accept that the rental unit was uninhabitable and it was reduced to a storage facility for the Tenants' belongings. Consequently, I find the value of the rental unit as a storage facility is

\$200.00 for the month of November, 2015. I find the Tenants loss the use of the rental unit to live in as there was no hydro connected by order of the Landlord. Consequently, I award the Tenants the difference between the rental amount \$775.00 paid and the storage value of \$200.00 in the amount of \$575.00.

As well because the Tenants were unable to cook in the unit due to the Landlord block the hydro being connected, I find the Tenants have established grounds for additional living expenses and I award the Tenants \$275.00 for living expenses due to the rental unit being uninhabitable. The Tenant will receive a monetary order enforceable in Provincial Court of British Columbia in the amount of \$850.00 ( $\$575.00 + \$275.00 = \$850.00$ ).

### Conclusion

A Monetary Order in the amount of \$850.00 has been issued to the Tenants. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlord's application is dismissed without leave to reapply.

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 22, 2015

---

Residential Tenancy Branch

