



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNL, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 66;
- cancellation of the landlords' 2 Month Notice, pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his agent RP (collectively "landlords") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had authority to represent "landlord JG," the other landlord named in this application, as an agent at this hearing. The landlord confirmed that his agent, who is his son, had authority to speak on his behalf at this hearing.

The two tenants confirmed receipt of the landlords' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' Application.

The two tenants confirmed personal receipt of the landlords' 1 Month Notice to End Tenancy for Cause, dated June 2, 2016 ("1 Month Notice") on the same date. The notice indicates an effective move-out date of July 31, 2016. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 1 Month Notice on June 2, 2016.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' Application to add the relief of cancelling the landlords' 1 Month Notice and seeking a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement. The landlords consented to these amendments during the hearing, stating that they had notice of the tenants' claims and were aware of what they were seeking prior to this hearing.

The tenants stated that they did not require their claims for more time to apply to cancel the 2 Month Notice and cancellation of the 2 Month Notice. Both parties agreed that the landlords did not issue a 2 Month Notice to the tenants. Accordingly, these portions of the tenants' application are withdrawn.

### Background and Evidence

The tenants said that their tenancy began on June 1, 1989. The landlord stated that he assumed the tenancy when he bought the rental unit in 1992. Both parties agreed that rent in the current amount of \$1,310.00 is payable on the first day of each month. Both parties agreed that the tenants paid a security deposit, which the landlords continue to retain; however, neither party could recall the amount of the security deposit.

The tenants seek to cancel the landlords' 1 Month Notice and to recover the \$100.00 filing fee paid for their Application. The tenants seek to recover \$21.42 total in registered mail costs and \$10.00 in parking costs, all associated with filing and mailing their Application.

The tenants seek to recover \$1,000.00 for moving expenses. The tenants claim that they have to vacate the rental unit because the landlord issued two baseless 1 Month Notices to end their tenancy and they will have to incur future moving expenses to move their furniture. The landlords dispute the above claim.

The tenants seek \$5,000.00 for stress, anxiety, undue hardship and fines for the landlords' breaches of the *Act*. The tenants state that the landlords' agent harassed them and made false allegations against them, that the landlords have caused them stress by issuing repeated notices to end tenancy for illegal activities which have not occurred, and that they have improved the landlords' property without reimbursement. The landlords dispute the above claim, claiming that the tenants could have vacated the property earlier if they felt uneasy at the rental unit and that no other tenants have reported issues regarding the same problems.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for cause?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this Application?

Analysis

Settlement of Part of Claim

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on September 30, 2016, by which time the tenants and any other occupants will have vacated the rental unit;
2. The landlords agreed to pay the tenants \$100.00 for the filing fee for this Application;
  - a. Both parties agreed that the tenants are permitted by the landlords to reduce their rent by \$100.00 and only pay a total of \$1,210.00 for rent due on August 1, 2016, to enforce the above reimbursement for the filing fee; and
3. The landlords agreed to provide the tenants with positive references for future potential housing and tenancy options.

These particulars comprise the full and final settlement of a part of the dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a part of this dispute.

Decision regarding Tenants' Monetary Claim

When a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

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

I dismiss the tenants' claim of \$1,000.00 for moving expenses, as I find that the tenants failed parts 1, 2 and 3 of the above test. The tenants are claiming for a future expense that they have not yet incurred. The tenants did not provide a breakdown of the above amount. The tenants agreed to move from the unit and would have incurred these costs in any event when moving. I find that the landlords are not responsible for this cost.

I dismiss the tenants' claim of \$5,000.00 for stress, anxiety, undue hardship and the landlords' alleged breaches of the *Act*. I find that the tenants failed parts 1, 2 and 3 of the above test. The tenants did not provide a breakdown of the above amount. I find that the tenants did not provide sufficient evidence to support the above claim, such as medical records to show that they suffered from stress and anxiety or work records to show that they missed time from work or were unable to work. I find that the landlords are not responsible for this cost.

As noted to the tenants during the hearing, they are not entitled to recover registered mail costs of \$21.42 and parking costs of \$10.00, as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord(s) **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on September 30, 2016. The landlord(s) are provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on September 30, 2016. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' 1 Month Notice, dated June 2, 2016, is cancelled and of no force or effect.

The tenants' application for more time to make an application to cancel the 2 Month Notice and cancellation of the 2 Month Notice are withdrawn.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement 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: July 08, 2016

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Residential Tenancy Branch