



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNSD, MNDC, FF (Tenants' Application)  
OPR, MNR, MNDC, MNSD, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution filed on June 6, 2016 they sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 3, 2016 (the "Notice"), a monetary Order in the Amount of \$1,000.00 and recovery of the \$100.00 filing fee. In the Landlord's Application for Dispute Resolution filed June 16, 2016 she sought an Order of Possession, a Monetary Order in the amount of \$3,300.00 for unpaid rent, authority to retain the Tenants' security deposit, as well as recovery of the filing fee.

Both parties appeared at the hearing. 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 make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the outset of the hearing the parties confirmed the Tenants vacated the rental unit such that the Tenants' Application to cancel the Notice and the Landlord's request for an Order of Possession was no longer required

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Is the Landlord entitled to monetary compensation from the Tenants?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee paid for their respective applications?

### Background and Evidence

The residential tenancy agreement was introduced in evidence and which confirmed that the tenancy began on August 1, 2015. Monthly rent was payable in the amount \$1,650.00 payable on the first of the month. The Tenants paid a security deposit in the amount of \$825.00 on July 22, 2015.

The Landlord testified that the Tenants failed to pay rent for the month of June 2016 and as a result she issued a 10 Day Notice to End Tenancy on June 2, 2016.

The Tenants made an application to dispute the Notice on June 6, 2016. The Landlord stated that they also didn't pay rent for July 2016 such that she sought unpaid rent for July 2016 as well.

The Landlord testified that on approximately July 4, 2016 she received an email from the Tenants confirming they would be moving from the rental unit on July 15, 2016. Although not provided in evidence, the Landlord read the contents of the email to me during the hearing. In this email the Tenant wrote that the eviction notice had "put them in a very difficult position" and that she was advised that the condition of the rental unit was detrimental to her entire family as well as her unborn child.

The Landlord further stated that on July 16, 2016 she drove by the rental unit and she observed that the Tenants had moved out.

In response to the Tenants' claims the Landlord testified as follows. She stated that on May 23, 2016 the Tenants informed her that they had an issue with the washing machine as well as rats. She stated that she immediately took steps to address these issues. Introduced in evidence were an email and an invoice from a pest control company confirming that she paid the sum of \$393.75 to address issues with rats at the

rental unit. The Landlord confirmed she was opposed to compensating the Tenants for the amounts claimed.

The Tenant, J.G. testified as follows. She claimed that they moved out of the rental unit by July 1, 2016. When her email of July 4, 2016 was brought to her attention, J.G. stated that the email that she sent the Landlord “was an accident” and she “should have changed it”. She stated that she had to move out as quickly as possible because she is pregnant and has two other children; she said it was “such a disgusting environment” that they had to be out as soon as possible. She also claimed she was told to move out as quickly as possible by her doctor.

The Tenant also stated that originally, on May 26, 2016, one of the Landlord's friends used poison to deal with the rats which caused the rats to die within the walls and the resulting smell was overpowering.

She further stated that she was informed that poison should not be used in houses because of the smell. She stated that from May 23, 2016 to the date they moved out approximately 12 rats were caught in addition to the ones which died in the walls.

In respect to the \$1,000.00 claim by the Tenants, the Tenant stated that this claim related to items she claims she disposed of as a result of the rat infestation in the rental unit. She testified that she had to dispose of a king sized bed and three large rugs which she claimed added up to \$1,000.00. No photos were provided in support of this claim or any other evidence to support the amount claimed.

J.G. confirmed that they did not pay rent for June of 2016 nor did they pay for July of 2016. She further stated that her husband, R.M., in the first week of June told the Landlord that they would be moving out of the rental unit by July 1, 2016.

J.G. claimed that her baby is due as of September 2016 and she was told that the smell of feces and death would affect her unborn child and she was opposed to

### Analysis

I will first deal with the Landlord's claim for unpaid rent for June and July 2016. I accept the Landlord's evidence that she received the Tenants' written notice to end the tenancy on July 4, 2016. The Tenant acknowledged this email was sent but testified it was a “mistake”; she stated that her husband called the Landlord to give notice to end the tenancy in May of 2016.

Verbal notice is insufficient to end a residential tenancy; however, an email for which the recipient acknowledges receipt may be sufficient. In this case, I find the Tenants gave written notice to end their tenancy by email on July 4, 2016. Pursuant to sections 45 and 52 of the *Residential Tenancy Act* the effective date of the Notice is August 31, 2016; for greater clarity the relevant portions of those sections are reproduced as follows:

**Tenant's notice**

**45** (1) A tenant may end a periodic 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, and

(b) 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.

...

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

The Landlord seeks compensation for unpaid rent for June 2016 and July 2016 only. While she may also have been entitled to compensation for August 2016 (based on the effective date of the Tenants' Notice) this was not requested. In consideration of the above, I grant the Landlord her request for monetary compensation for the unpaid rent for June and July 2016 in the amount of **\$3,300.00**.

I will now address the Tenants claim for compensation in the amount of \$1,000.00 for furniture they claim to have disposed of due to the presence of rats in the rental unit.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenants have the burden of proof to prove their claim.

The Tenants claim that their king sized bed and rugs were damaged due to the rat infestation in the rental unit and were disposed of. They submit that these losses are a result of the actions or neglect of the Landlord in her handling of the rat issue. The Tenant testified that the Landlord initially had a friend tend to this problem with the use of rat poison and that the resulting death and decomposition of the rats created an extremely foul smell.

In consideration of the evidence before me I am unable to find that the Tenants have proven their claim for \$1,000.00 for losses associated with the presence of rats in the rental unit.

The testimony of the parties was that the Tenants informed the Landlord of the rat issue on May 23, 2016. The Landlord submitted an invoice from a pest control company which confirmed they were hired to deal with the rats as early as June 2, 2016; notably, this was after the Landlord's friend laid poison for the rats. The Tenants suggest that using rat poison in a residential building is negligent; the basis of their belief is an alleged conversation the Tenant had with the pest control company hired by the Landlord. That individual did not testify at the hearing. Without further corroborating evidence I am not able to conclude that the Landlord's actions were negligent in this regard. In all the circumstances, I find that the Landlord acted in a timely manner and addressed this issued without any unreasonable delay.

The Tenants failed to submit any photos of the items they claim to have discarded. Further, they failed to provide any evidence of the actual value of those items such as receipts for purchase or estimated cost of replacement. Finally, it is also unclear to me

whether they took any steps to clean the items or otherwise mitigate their loss. In all the circumstances, I find they have failed to prove the four elements listed in this my Decision and have therefore provided insufficient proof that they suffered a loss of \$1,000.00. Their claim is consequently dismissed.

The Landlord, having been substantially successful, is entitled, pursuant to section 72 of the *Residential Tenancy Act* to recover the \$100.00 filing fee. As I have already granted her request for unpaid rent in the amount of \$3,300.00 her total monetary entitlement is **\$3,400.00**. I also grant the Landlord authority pursuant to section 38 to retain the Tenants' security deposit in the amount of **\$825.00** and I grant her a Monetary Order for the balance due in the amount of **\$2,575.00**. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

### Conclusion

The Tenants application for monetary compensation is dismissed. The Landlord is awarded the sum of \$3,400.00 representing unpaid rent for June 2016 and July 2016 in addition to the \$100.00 filing fee, may retain the security deposit in partial satisfaction of that claim and is granted a Monetary Order in the amount of **\$2,575.00** for the balance due.

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 19, 2016

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Residential Tenancy Branch