



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on February 11, 2016. The Tenants filed seeking an \$800.00 monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord; both Tenants; and the Tenants' Advocate. The Landlord and Tenants gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord acknowledged receipt of the Tenants' application; notice of hearing documents; and their documentary evidence. No issues regarding service or receipt of those documents were raised. As such, I accepted the Tenants' submissions as evidence for these proceedings.

On September 20, 2016 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch. The Landlord affirmed that he did not serve the Tenants with copies of those documents.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the

applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Landlord's evidence was not served upon the Tenants in accordance with Rule of Procedure 3.15, I declined to consider that documentary evidence. I did however consider the Landlord's oral submissions.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Have the Tenant's proven entitlement to monetary compensation equal to one month's rent?

#### Background and Evidence

The parties entered into a verbal month to month tenancy agreement which began in April 2015. Rent of \$800.00 was payable on the first of each month and the Tenants paid \$400.00 as the security deposit. The Tenants vacated the property by January 15, 2016. A move out condition inspection report form was completed and signed by both parties on January 15, 2016.

The male Tenant submitted that the Landlord is his maternal uncle; his mother's brother. Although the Landlord and Tenant were related this verbal tenancy was not a family arrangement whereby the Tenants were granted occupancy without the requirement to pay rent. Rather, the aforementioned verbal agreement was a landlord and tenant agreement whereby the Tenants were required to pay a monthly economic rent.

The rental unit was described as being the top level of a two level single detached home which was located on the same property as the Landlord's home (2 houses on the same property). The lower level of the rental house was a self-contained basement suite not included in these Tenants tenancy.

Each Tenant and the Landlord signed a hand written two page document titled "NOTICE TO VACATE" which was dated January 15, 2016; as provided in the Tenants' documentary evidence. That document included, in part, as follows:

*Regarding our dispute, [female Tenant's name] and I have agreed upon your offer of giving back one month's rent, \$800.00 in total, and the damage deposit, \$400.00 in total...(p 1 para 1)*

[Reproduced as written excluding Tenant's name]

*This stands as our written notice for moving out of [rental unit address] on  
Saturday, January 16, 2016... (p 2 para 3)*

[Reproduced as written excluding address]

The Tenants asserted that the aforementioned agreement was a mutual agreement with the Landlord to end their tenancy for as soon as possible, in exchange for monetary compensation. They submitted that when the Landlord failed to repair the rental unit, as stated in that document, they requested the required repairs again and the Landlord told them to move out.

The Landlord returned the full \$400.00 security deposit to the Tenants on January 28, 2016. The Tenants submitted they now seek the \$800.00 compensation which was equal to the return of one month's rent for moving out as soon as possible; as per the aforementioned agreement.

The Landlord testified that on September 9, 2016 he attended the rental unit to put baking soda down the drains to try to appease the Tenants' complaints of odors coming up from the drains. He stated that when he was leaving the Tenants continued to complain so he responded "if you don't like it you can move".

The Landlord confirmed he initialled, not signed, the two page document as submitted into evidence. He asserted he felt intimidated the day he signed that agreement as there were so many people around him telling him to just sign it. The Landlord stated his sister and the two Tenants were present when they kept telling him to sign the paper so he "initialled, not signed" the paper. The Landlord strongly emphasised that he did not sign the mutual agreement; he initialled it.

The Landlord stated he did not take the time to read the document and later changed his testimony to say he could not read the document when it was presented to him to sign, because he did not have his glasses with him at the time. The Landlord then changed his submissions saying it was a small piece of paper he initialled on the day of the move out inspection and not a two page document.

The Landlord later argued that he did not see the aforementioned two page document until he delivered the security deposit refund to the Tenants on September 28, 2016. I asked the Landlord how his signature showed up on the two page document if he did not sign it until September 28, 2016. The Landlord initially answered "that is not my signature". Upon further clarification the Landlord asserted that he had signed the two page document on September 28, 2016, the same day he returned the deposit to the Tenants. In the same sentence the Landlord changed his submission to say he initialled the two page document and did not sign it.

The Landlord argued the Tenants did not inform him they were moving out until the day they left, so he should not have to return a month's rent of \$800.00 to the Tenants. He

submitted his rental unit remained empty for two months after the Tenants moved out so quickly.

The Tenants submitted the tenancy ended by written mutual agreement in accordance with the regulations and *Act*; which included the Landlord returning one month's rent and their full security deposit.

### Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 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.
- 7(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.

Section 67 of the *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 44(1)(c) of the *Act* provides that a landlord and tenant may agree, in writing, to the terms in ending a tenancy.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 1 of the *Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

After careful consideration of the foregoing; documentary and oral submissions; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*, pursuant to sections 1 and 91 of the *Act*.

I favored the Tenants' submissions over the Landlord's as the Tenants' submissions were forthright, consistent, and supported by documentary evidence. The Landlord's submissions were inconsistent as he initially stated he signed the two page mutual agreement; then the Landlord began to argue he only initialled the document; then the Landlord began to argue he initialled a small piece of paper during the move out inspection and not the two page document dated January 15, 2016 before stating he did not read the document before signing it and he felt intimidated to sign it.

There is a heavy burden on a landlord to show that there was coercion, duress, or intimidation forcing an agreement to be signed. In this case I conclude the Landlord has not established on a balance of probabilities that there was coercion, duress, or intimidation as to have forced him into signing the mutual agreement to end this tenancy. At best it can be said that the Landlord's sister may have asserted there would be a family dispute if he did not sign the agreement.

In addition, I find it unlikely that the Landlord did not know what was written in the document he was signing. However, if that was the case, I find if the Landlord had done his due diligence and read the document before signing it he would have known that he was agreeing to refund a month's rent and return the security deposit. It should be noted that a failure to determine one's legal rights beforehand or a failure to complete due diligence in reading a document or contract before signing it are not a defence against enforcement of the terms of an otherwise legal agreement.

I found the Tenants' submissions that they made arrangements to vacate the property by January 15, 2016, after the Landlord told them to leave on January 9, 2016 to be plausible given the circumstances presented to me at the hearing. I further find the Landlord and Tenants entered into a written mutual agreement to end this tenancy which included agreed upon terms that the Landlord would return the Tenants' \$400.00 security deposit plus one month's rent of \$800.00.

Based on the above, I find in favor of the Tenants' and grant their application in the amount of \$800.00, pursuant to section 67 of the *Act*.

The Landlord is hereby ordered to pay the Tenants the sum of **\$800.00**, forthwith.

In the event the Landlord does not comply with the above Order, the Tenants have been issued a Monetary Order for **\$800.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenants were successful with their application and were granted monetary compensation of \$800.00.

This decision is final, legally binding, and 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: September 29, 2016

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Residential Tenancy Branch