



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant's application: MNDC, MNSD, O, OLF, FF

Landlord's application: MNDC, MNSD, FF

### Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The landlord attended and was represented by his daughter. The tenant's representative attended and participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is the lower suite in a house in Surrey. The tenancy began December 1, 2014. The monthly rent was \$1,200.00 and the tenant paid a security deposit of \$600.00 at the start of the tenancy. The landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice was dated January 12, 2016 and it required the tenants to move out of the rental unit by February 28, 2016. The tenants acknowledged receiving the Notice on January 14, 2016. The tenants did not dispute the Notice to End Tenancy. On January 23<sup>rd</sup> they notified the landlord that they were moving and they moved out on January 31, 2016. In the tenant's application she claimed payment of the sum of \$3,330.00. At the hearing the tenant's representative said the tenant was seeking payment of the sum of \$2,400.00 as compensation equivalent to two months' rent.

According to the landlord the tenants were given a Notice to End Tenancy because they kept a dog in the rental unit contrary to the tenancy agreement. The tenant submitted that the landlord evicted the tenant because he intended to use the rental unit for his own use so that his relative could move in, but instead he rented the unit to new tenants.

The landlord said that the tenants' lease expired on December 1, 2015 and they offered a new lease with different conditions. The landlord complained that the tenants acquired a dog after the tenancy started without the landlord's permission and without paying a pet deposit. The landlord also said the tenants did not clean up after the dog. The tenants installed their own portable washer and dryer without permission. The landlord claimed that this caused a large increase to the landlord's Hydro bill. The landlord claimed that the tenant's husband used electric tools to perform woodworking in the rental unit; he made a mess due to dust and leftover materials and used an excessive amount of electricity. The landlord said the rental unit smelled and needed professional cleaning. He said that the tenants damaged and clogged the toilet. The landlord claimed a monetary award in the amount of \$2,207.98, made up of the following amounts:

- Cleaning equipment: \$99.44
- Pest control payment for mice control: \$260.00
- B.C. Hydro charges for past four months: \$171.77
- Landlord's time to clean up rental unit: \$100.00
- Carpet cleaning charges for second time: \$94.50
- Los of rent, one month: \$1,200.00
- Charge for photographs: \$19.77
- Plumber charge to replace toilet: \$262.50

The landlord submitted photographs said to show the condition of the rental unit at the end of the tenancy. The landlord said they showed that the carpets were excessively stained and marked by the tenant's dog. The rental unit was not cleaned. There was sawdust in the tracks of the windows from the husband's woodworking. The bathtub was dirty and there was dog waste in many locations in the yard.

The tenant said that the landlord gave the tenants verbal permission to have a dog before the tenants purchased the dog in October. The tenant denied that the increased Hydro bill was caused by the tenants. The tenant said the increase was due to the number of people living upstairs in the landlord's portion of the house and not because of the tenant's small portable machines.

The tenant denied breaking the toilet. She said that there was no ball clogging the toilet and the landlord's bill said that it was for a toilet seat only. According to the tenant a complete walk through was performed at the end of the tenancy and the landlord returned the tenants security deposit; the tenant said the landlord returned the deposit and told her he was doing renovations. The tenant said in her statement that the day they moved out a moving truck arrived with furniture that was put in the garage. The tenant disputed that the landlord was unable to rent the unit for a month.

The landlord submitted evidence showing advertisements posted, offering the unit for rent.

### Analysis

The tenant has claimed compensation equivalent to two months' rent, apparently based on her assertion that the landlord gave her an improper Notice to End Tenancy; that he planned to move his family into the rental unit, but instead re-rented it to new tenants. The landlord served the tenant with a one month Notice to End Tenancy for cause. The tenant claimed that she responded by giving the landlord a 10 day notice and moving out early. A tenant may only give a 10 day Notice in response to a two month Notice to End Tenancy for landlord's use. The tenant's claim for compensation equivalent to two month rent is without foundation and it is dismissed without leave to reapply. In other submissions the tenant requested compensation for moving expenses, for compensation because the stove allegedly did not work and for a rent differential for her new accommodation and for return of her security deposit. The security deposit was returned and there is no basis for the other claims and no proof of loss or expense related to a stove malfunction. The tenant's claims for a monetary award for these items are also dismissed without leave to reapply.

The landlord has claimed a monetary award as detailed above. The landlord claimed payment of \$260.00 said to have been incurred for eradicating mice. The invoice submitted by the landlord was dated December 6, 2015. The landlord has not provided convincing evidence that there was a rodent problem at the rental property that was caused by the tenants; this claim is therefore denied.

The landlord claimed amounts said to be for increased Hydro bills due to the tenants' excessive use of electricity. The landlord may not re-write the provisions of the tenancy agreement to place limits on utility consumption. The tenant submitted that the landlord's utility bill increased because of the increased number of occupant in the

landlord's portion of the house. I find that the landlord does not have a basis to claim compensation for increased hydro bills and this claim is denied.

The landlord claimed for the cost to provide photos as evidence; this is not a recoverable cost and the claim is denied.

The landlord claimed the cost to replace a toilet in the amount of \$262.50. The landlord said the toilet was damaged by the tenant and balls from the tenant's dog were found in the toilet by the plumber who replaced it. The landlord did not submit any photographs to show damage to the toilet. I find that the landlord has not proven on a balance of probabilities that the toilet was damaged by the tenant or that it needed to be replaced.

The landlord claimed loss of rental income for one month. The landlord based his claim on the tenant's failure to give one month's written notice before moving out. I find that the tenant failed to give the landlord the required notice before she moved out on January 31, 2016. She did notify the landlord in writing on January 23, 2016 that she was moving out on January 31, 2016. Despite the fact that the tenant provided less than the required notice, the landlord is nonetheless required by section 7(2) of the *Residential Tenancy Act* to do whatever is reasonable to minimize his loss. The only evidence provided by the landlord to show that he took steps to re-rent the unit were photographs of a notice advertising to the rental unit said to have been posted at a temple. The landlord did not submit copies of any advertisements or internet postings offering the rental unit after the tenants notified that landlord that they were moving. I find that the landlord has not provided evidence to show that he took reasonable steps to mitigate his loss by acting promptly to rent the unit after the tenants gave notice. The landlord also did not submit evidence to establish that he did in fact re-rent the unit rather than using it for some other purpose and if so, when the new tenancy began. I dismiss the landlord's claim for loss of rental income for February for the reasons stated.

The landlord's photographs show that the tenants did not leave the rental unit acceptably clean at the end of the tenancy; I accept the landlord's testimony that the carpets were badly soiled and required several cleanings. Other interior cleaning was needed; there was sawdust in the window sills; the bathroom was not cleaned, there was wall damage and a quantity of dog waste in the yard that had to be removed. The landlord claimed for cleaning supplies and materials in the amount of \$99.44. He provided receipts for these expenditures. The landlord claimed \$100.00 for time spent cleaning and the further sum of \$94.50 for a second carpet cleaning. Based on the landlord's testimony, invoices and photographs, I find that the amounts claimed are reasonable and legitimate expenses to return the rental unit to a reasonably clean

condition. I allow the landlord's claim for cleaning and repairs in the amount of \$293.94. All other monetary claims by the landlord are dismissed without leave to reapply. The landlord is entitled to recover the \$100.00 filing fee for his application for a total award of \$393.94. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The tenant's application for a monetary award has been dismissed without leave to reapply. The landlord has been awarded the sum of \$393.94.

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 14, 2016

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Residential Tenancy Branch

