



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RE/MAX Kelowna Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with the tenants' application for monetary compensation for damage or loss under the Act, regulation or tenancy agreement. The tenants and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

### Background and Evidence

On August 1, 2014 the landlord and the tenants signed a tenancy agreement for a one-year fixed term tenancy to begin on September 1, 2014. The tenants arrived at the rental unit on September 1, 2014 and found that there was an unauthorized man in the unit; there were approximately 24 cats on the premises; and cleaning and repairs had not been done.

On September 3, 2014, the tenants signed a mutual agreement to end the tenancy on September 1, 2104. The tenants stated that they wished to end the lease because the landlord did not have the unit ready. The landlord reimbursed the security deposit and the first month's rent. The tenants stated that they did not know when they signed the mutual agreement to end tenancy that they would be giving up their right to make a monetary claim.

The tenants have claimed compensation for their moving expenses and costs related to not being able to move in to the rental unit. Those expenses are:

1. \$2,985.35 for moving and storage;
2. \$737.20 for food that was packed into the fridge and freezer – the tenants stated that they tried to save the food, but it was packed too tightly into the moving truck;
3. \$400.00 for toiletries, cosmetics and clothing – the tenants stated that they could not retrieve these items either;
4. \$75.00 for fuel spent viewing new properties; and
5. \$80.00 for an address change with Canada Post.

The landlord's response was that they offered the tenants a reduction in rent while carrying out repairs, but the tenants were adamant that they wanted out of the tenancy agreement. The landlord stated that the intention of the mutual agreement to end tenancy was to relieve parties of present, past or future costs related to the tenancy, and was a full and final agreement. The landlord stated that they did not pursue the tenants for two months of lost revenue because the mutual agreement was a full and final settlement.

### Analysis

I find that the mutual agreement to end tenancy that the tenants signed on September 3, 2014 was a full and final settlement that prevents either party from making any further claims against each other.

When a rental unit is not ready for occupation at the beginning of the tenancy, the landlord must accommodate the tenants until the rental unit is ready to be occupied, and reimburse them for any losses that have occurred as a result. Under section 45 of the Act, if a landlord breaches a material term of the tenancy agreement, the tenant must give the landlord written notice of the breach and allow the landlord reasonable time to correct the breach. If the breach is not corrected within a reasonable time, the tenant may end the tenancy. However, in this case the tenants chose to end the

tenancy by signing a mutual agreement to end tenancy. The landlord returned the security deposit and the first month's rent, and did not claim any costs against the tenants.

As the mutual agreement is a full and final settlement between the parties, the tenants are barred from making their application.

As their application was not successful, the tenants are not entitled to recovery of their filing fee.

### Conclusion

The tenants' application is dismissed in its entirety.

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: November 10, 2016

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Residential Tenancy Branch