



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for loss of rent?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security or pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy started on August 21, 2015 for a fixed term tenancy that was not due to end until August 20, 2016. The tenancy agreement has been provided in documentary evidence and shows this was a fixed term tenancy agreement that provides that the tenants will vacate the rental unit on the date specified as the end of the tenancy. Rent for this unit was \$1,200.00 per month due on the 21<sup>st</sup> of each month. The tenants paid a security deposit of \$625.00 on August 12, 2015 and a pet deposit of \$375.00 on August 21, 2015. Both parties attended a move in and a move out condition inspection of the unit and a copy of the inspection reports have been provided in documentary evidence.

The landlord testified that the tenants live in the upper suite of the landlord's home and the landlord lived in the basement suite. The tenancy agreement states that the yard is a shared area. The landlord testified that the tenants gave the landlord notice to end their tenancy on May 20, 2016 with an effective date of June 20, 2016. This Notice also contained the tenants forwarding address. The landlord testified that it was always her intention to move back into the upper unit for her health at the end of the tenancy.

The landlord testified that she did attempt to re-rent the unit for the final two months of the tenancy and adverts were placed on an internet site and in in two local newspapers. The landlord had six inquires about the unit but was unable to re-rent it due to the short term remaining on the tenancy. The landlord decided to then move back into the upper rental unit herself and did so on July 07, 2016.

The landlord testified that because the tenants broke the lease agreement by vacating the unit on June 20, 2016 and the unit could not be re-rented for the remaining term, the landlord seeks to recover two months' rent to an amount of \$2,500.00. The landlord also seeks to recover the costs to advertise the unit in two newspapers and referred to the invoices for the adverts for two amounts of \$18.84 and \$12.03.

The landlord testified that the tenants failed to repair some damage caused to the grass. The tenants had let their dog urinate on the front grass which left brown patches. When the tenant SW came to do the walk through he put down some grass seed but no soil and did not water the seed to enable it to root. The landlord testified that she had to put down more grass seed and soil and had to water this by hand every day for 14 days so the seed would root. The landlord seeks to recover \$19.70 for the grass seed and \$70.00 for her time in watering the seed for 14 days at \$5.00 a day.

The landlord testified that the tenants failed to repair some damage to a bedroom wall. There were some gouges in the wall which had to be filled, sanded and repainted. The landlord did get an estimate for this work for \$50.00 and has provided a copy of that in documentary evidence. However, the landlord decided to do the work herself and seeks to recover \$50.00 for materials and her labour. The landlord referred to the move out condition inspection report which notes damages on the wall in the third bedroom.

The landlord testified that the tenants failed to leave the rental unit clean. When SW came to do the inspection the landlord pulled away appliances and found hair and dust under them. The landlord agreed that only the fridge was on wheels. The stove, washer and dryer were not. SW said he was not going to come back to complete the clean so he used a paper towel and wiped those areas. The landlord testified that she did not feel that this was up to her standard of cleanliness or suitable for any new tenants. The landlord obtained a quote from a cleaner who came and looked at the cleaning to be completed. The cleaner quoted the landlord \$100.00 and estimated it would take five

hours to clean at \$20.00 an hour. The landlord testified that she decided to clean the unit herself and seeks to recover \$100.00.

The landlord seeks an Order to be permitted to keep the security and pet deposit in partial satisfaction of her claim. The landlord also seeks to recover the filing fee of \$100.00.

The tenants disputed the landlord's claim for a loss of rent for two months. The tenants testified that they had reasonable cause to end the tenancy before the fixed term expired due to a loss of quiet enjoyment and privacy. The tenants testified that the landlord living downstairs complained about their child making noise and when the tenants were shredding paper. The landlord controlled the air conditioning and the heat and told the tenants what temperature they should have their heating set at or she would turn off the furnace. When the tenant CM and their son went away for a few days the landlord noticed they had gone. The tenants felt they could not do anything in their unit without the landlord noticing, which invaded their privacy. When the tenants went outside the landlord would come out and while the tenants accept that the yard was a shared area they felt this infringed on their privacy.

The tenants e-mailed the landlord on many occasions from April 29 to June 6<sup>th</sup>, 2016 with their concerns. Furthermore towards the end of the tenancy they found the landlord had turned off the hot water to the tenants' washing machine. When the tenants wanted to do a hot wash they were unable to do so. The landlord did offer the use of her washing machine but would not turn the hot water back on as it leaked. Due to all the issues the tenants had they felt they had just cause to give notice to end their tenancy after they had secured a new place to live.

The tenants do not dispute that the landlord incurred some costs to advertise the unit but do dispute that these costs should be paid by the tenants. The tenants testified that the landlord did not run the newspaper adverts for very long in order to mitigate the loss

and find new tenants. When the tenants checked the internet rental site they did not see an advert for the unit on there.

The tenants agreed that there were some minor scuff marks on the third bedroom wall but they just needed some touch up painting as there were not gouges. The tenants therefore dispute the landlord's claim to recover \$50.00.

The tenants testified that the damage to the grass was not all caused by their dog. The tenants also had to walk across the grass to get to the door. Some of the damage to the grass was also caused when the tenants had to put salt down on the steps because of a leaking evestrough which the landlord did not repair. SW fixed that leak for the landlord. When SW returned to do the move out inspection he put down grass seed mixed with dirt and fertilizer and then the landlord only had to water the seed. This work could not be done prior to moving out as the tenants still had to walk across the lawn to access the unit.

The tenants disputed the landlord's claim for cleaning. The move out inspection shows that the unit was clean and any areas found at the inspection were cleaned using wet and dry paper towels and marked as cleaned on the report. The tenants testified that they did clean under the fridge but were not required to clean under the stove or washer/dryer because they were not on wheels.

The tenants disputed the landlord's application to keep the security and pet deposit. The tenants seek to recover these deposits from the landlord.

The landlord testified that with regard to the painting and wall damage. The unit had been painted prior to the tenants moving in and the painter said he could not just paint over the wall damage it had to be filled, sanded, primed and painted. The landlord testified that with regard to the adverts the local paper ran adverts from June 03 to June 10 and the second newspaper ran an advert on June 24. The internet site ran an advert continually. The landlord testified that the reason she moved upstairs was to get the

basement unit ready to rent. The landlord testified that there is no basis for finding that she breached the tenancy agreement or the *Act*. The landlord lived downstairs and did not invade the tenants' privacy. The landlord's unit was colder being in the basement and she did allow the tenants to put on the air conditioning a month earlier. The landlord felt she had a good relationship with the tenants and their child. The landlord testified that the tenants' complaints really started after they had given notice to end their tenancy. The landlord believes the tenants did this to try to build a case against the landlord to justify them ending the tenancy early. The tenants had already found a new place to live by this time.

The landlord declined to cross examine the tenants.

The tenants asked the landlord if she moved into the upper unit before or after she filed her application the landlord responded it was after. She started to move her things in on July 07, 2016.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

*Loss of rent* – this was a fixed term tenancy which was not due to end until August 20, 2016. The tenants gave notice and ended the tenancy on June 06, 2016. The tenants argued that they were entitled to end the tenancy before the end of the fixed term due to the landlord's actions in causing the tenants to lose their right to quiet enjoyment and privacy of their rental unit.

Having considered the evidence before me I refer the parties to the Residential Tenancy Policy Guidelines #30 which provides guidance on ending a fixed term tenancy and states, in part, that

A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of

a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Policy Guideline # 6 provides guidance on the tenants' right to quiet enjoyment of their rental unit and states, in part, that a breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the RTA a tenant may, with written notice, end a tenancy due to the breach of a material term. The standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the premises.

Under section 28 of the *Act* a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

I find the tenants have insufficient evidence to show that the landlord breached the tenants' right to quiet enjoyment or privacy in a manner that would be so serious that the tenants had to end the tenancy two months early. The parties lived in the same house in separate units and must expect that there will be some noise transference, some issues over the control of heat and cooling and some issues over common shared areas. It does appear that the tenants only started to raise issues after they had already either found somewhere else to live or had already given notice and I find the landlords concerns justified that it is likely that these complaints occurred to reinforce the tenants case against the landlord.

However, the landlord also has an obligation under s. 7(2) of the *Act* to proof what steps were taken to mitigate or minimize the loss by trying to re-rent the upper unit as quickly as possible. While I accept that the landlord's intention was to move back into the upper

unit at the end of the tenancy and that it would be very difficult to re-rent that unit for such a short term; I find the landlord still only ran her advertisements for a short period of time before deciding to move into the upper unit herself on July 07, 2016. I therefore find that for the period from June 21 to July 07, 2016 the landlord is entitled to recover a loss of rent for 17 days, thereafter, the rental unit was occupied by the landlord and no longer available for rent. Consequently, the landlord is entitled to a monetary award of **\$708.33**.

*Advertising costs* – I am satisfied that the landlord incurred costs to advertise the unit; had the tenants remained in the unit until the end of the fixed term the landlord would not have incurred these costs. I therefore find in favour of the landlord's claim to recover the total amount for the advertisements of **\$30.87**.

*Damage to the unit site or property* – based on the evidence before me I am satisfied that there was some damage left on a bedroom wall in the unit. Tenants are required under s. 32 of the *Act* to repair any damage caused during their tenancy and they failed to repair the damage to the wall. Consequently, I find in favor of the landlord's claim to recover **\$50.00** for her time and materials used to repair this wall.

With regard to the damage to the grass; I am not satisfied that it is reasonable for the landlord to receive compensation from the tenants for this damage. This was the tenant's only access into their unit and i find it reasonable that they could not put down grass seed prior to vacating. The landlord has insufficient corroborating evidence to show that the tenant SW did not put down a grass seed and dirt mixture and It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. Consequently, as the landlord has the burden of proof in this matter I find the landlord's claim to recover costs to repair the grass is dismissed.



With regard to the landlord's claim for additional cleaning; I am satisfied from the evidence before me that the tenants left the rental unit reasonable clean. Under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Further to this, tenants are not required to pull out appliances that are not on wheels in order to clean underneath these appliances. Consequently, this section of the landlord's claim is dismissed.

As the landlord's claim has some merit i find the landlord is entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*.

I Order the landlord to retain part of the security and pet deposit as shown below in satisfaction of the landlord's monetary claim pursuant to s. 38(4)(b) of the *Act*. The balance of the security and pet deposit must be returned to the tenants.

Loss of rent for 17 days	\$708.33
Advertisements	\$30.87
Wall repair	\$50.00
Filing fee	\$100.00
<b>Total amount of the landlord's monetary award</b>	<b>\$889.20</b>
Less security and pet deposit	(1,000.00)
<b>Total amount of deposit to be returned to the tenants</b>	<b>\$110.80</b>

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may deduct the amount of **\$889.20** from the security and pet deposits held in trust by the landlord.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$110.80** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: January 05, 2017

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Residential Tenancy Branch