



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MNDC, MNSD, SS, FF, O  
MT, CNR, AAT, ERP, LRE, MNR, MNSD, MNDC, OLC, PSF, SS, FF, O

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for:

- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlords to keep all or part of the pet damage deposit or security deposit;
- an order permitting the landlords to serve documents in another way than provided by the *Act*; and
- to recover the filing fee from the tenants for the cost of the application.

The tenants have applied for:

- more time than prescribed to dispute a notice to end the tenancy;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlords provide access to and from the rental unit;
- an order that the landlords make emergency repairs for health or safety reasons;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for return of all or part of the pet damage deposit or security deposit;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement;
- an order that the landlords provide services or facilities required by the tenancy agreement or the law;
- an order permitting the tenants to serve documents in a different way than provided by the *Act*; and
- to recover the filing fee from the landlords.

Both landlords and one of the tenants attended the hearing and the tenant also represented the other tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

During the course of the hearing the parties advised that the tenancy has ended, and therefore the following applications made by the tenants are dismissed:

- for more time than prescribed to dispute a notice to end the tenancy;

- for an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- for an order that the landlords provide access to and from the rental unit;
- for an order that the landlords make emergency repairs for health or safety reasons;
- for an order limiting or setting conditions on the landlords' right to enter the rental unit;
- for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and
- for an order that the landlords provide services or facilities required by the tenancy agreement or the law.

Also, during the course of the hearing, the landlords withdrew the application for an order permitting the landlords to serve documents in a different way than provided by the *Act*.

The hearing was very lengthy due to constant interruptions by the tenant and numerous interruptions by one of the landlords. Both parties were warned several times, and had the system been working I would have cut both of them from the conference call. As a result of the parties' continuous refusal to follow directions, I exited the conference call hearing.

The tenant advised that he had provided evidentiary material to the Residential Tenancy Branch on November 1, 2017 and provided a copy to the landlords on October 31, 2017. The evidence has not been received by me and the landlords received it the day prior to this hearing. The Rules of Procedure require that evidence be provided to the other party at least 7 days prior to the hearing, and time must be considered for service. The tenant was not able to establish that the material was served in accordance with the *Residential Tenancy Act* and Rules of Procedure, and therefore the tenants' evidentiary material is not considered, however the landlords' evidence is considered in this Decision.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue and enforcement costs of an Order of Possession?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlords for the cost of emergency repairs?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for breach of a term of the tenancy agreement?
- Have the tenants established a monetary claim as against the landlords for return of all or part of the security deposit?

### Background and Evidence

**The first landlord** (RSG) testified that this fixed term tenancy began on May 1, 2017 and was to expire on April 30, 2018 at which time the tenancy was to end and the tenants were required to vacate the rental unit. Rent in the amount of \$1,750.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$875.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the top level of a house, and the bottom level was used by the landlords as a Bed and Breakfast, which had its own separate entrance. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords were successful in obtaining an Order of Possession on 2 days notice to the tenants and a monetary order for unpaid rent for the months of July and August, 2017, and there are no other rental arrears. The orders were served on the tenants on August 22, 2017 but the tenants didn't move out. The landlords obtained a Writ of Possession from the Supreme Court of British Columbia and contacted the Court Bailiff, however before executing it the landlords received an email from the tenant dated August 28, 2017 saying the tenants had moved out.

The landlord further testified that move-in and a move-out condition inspection reports had been completed, and the landlords received the tenants' forwarding address in writing during the move-out condition inspection on August 29, 2017.

The tenant who attended this hearing had claimed unfit living conditions in the rental unit and the landlord knew that not to be true so inspected the rental unit on August 11, 2017 and didn't see any evidence of pests. However, the landlord called a pest control person who was scheduled to inspect on August 22, 2017. The tenants allowed the inspector to enter, who asked the tenant if there was any evidence of rodent activity, and the tenant replied that there wasn't. The landlord was also present, and testified that the tenant admitted to the pest control person that there were no problems in the living area. Reports of the inspector have been provided as evidence for this hearing. The landlord testified that the report shows a dead mouse was found but no trap and no droppings, and it appeared as though the mouse had been planted. Minor evidence of rat droppings were also indicated in the report in the shed area, so traps were set in the attic, shed and the outdoor storage area.

The landlords were not able to advertise the rental unit until the tenants vacated, and as a result lost rental revenue. On August 30, 2017 the advertisement was placed for the top floor of a house for \$1,695.00 per month. It's very difficult to rent in the community during the fall, and the landlord didn't think they would be successful finding tenants for the same rental amount and wanted to re-rent it as soon as possible. Further, the tenancy agreement provides for liquidated damages in the amount of \$875.00, which the landlords also claim.

The tenancy agreement also specifies that tenants are not to interfere with the Bed and Breakfast guests. However, the tenant emailed the landlord saying he was going to sabotage the business and called the health inspector. Scheduled guests either cancelled or were cancelled by the landlords to prevent putting them in a volatile situation with the tenants. The landlords had to reimburse some guests, and claim \$3,952.00.

The tenants left garbage behind, and the landlords have provided a receipt in the amount of \$300.00 for weeding and garbage removal. The landlords claim \$100.00 of that for garbage removal.

The landlords had to travel to the rental unit to serve the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for inspections, again with the pest control person, and to serve the Order of Possession and monetary order. The landlords had to take a ferry each time and claim compensation from the tenants in the amount of \$1,088.95 for travel expenses.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$3,500.00 for the monetary order the landlords received but has not yet been paid by the tenants;
- \$1,750.00 for loss of rental revenue for September, 2017;
- \$385.00 for the reduced rent for a new tenant to the end of this lease;
- \$875.00 liquidated damages;
- \$3,952.00 for loss of revenue from the Bed and Breakfast unit;
- \$100.00 for garbage removal;
- \$493.50 for the unnecessary pest control inspection;
- \$1,088.95 travel expenses (3 trips);
- \$220.00 for the filing fee for the Writ of Possession;
- \$170.00 for cancellation fees charged by the Court Bailiff (estimated);
- 42.84 for registered mail;
- \$30.00 advertising expense;
- \$5,000.00 for slander and damaging the landlords' reputation in the neighbourhood; and;
- \$5,000.00 for slander and damaging the landlords' business reputation with the Bed and Breakfast.

The landlords' total claim is \$22,607.29. The landlords do not yet have the invoice from the Court Bailiff, however the landlord was advised by the Court Bailiff that the cost will be about \$170.00.

**The second landlord** (CMG) testified that the tenants paid rent for May and June and then stopped paying. Up until the landlords demanded rent, after excuses from the tenants, the tenant claimed the Bed and Breakfast unit was a health issue.

The landlords dealt with everything in the rental unit immediately. There was never an infestation or any pests inside the rental unit.

**The tenant** testified that the rental building was supposed to be non-smoking, and the tenant has cancer. Later, the landlord advised that some guests have been permitted to smoke and said there was nothing the landlords could do about it. The smell was entering the rental unit.

The tenant never would have rented a smoking unit, and the pest control person said to put out traps. It's not a safe place, and the tenant took photographs of rodent droppings and tracks on the window ledge.

The tenants' application claims \$10,000.00 for: "Serious Contamination of 2 types of rodents + high condensation of drops and negligence from landlord to handle issues properly, as the landlord have definitely back off of verbal agreement (recorded on Video) times to prepare file is required." The tenants also dispute the landlords' claims.

### Analysis

Firstly, the tenant's position is that the tenants were justified in not paying rent due to the condition of the rental unit, and the tenants claim back the 2 months of rent paid. The tenants also claim damages for the landlords' misrepresentation of a non-smoking unit. I see no evidence that the rental unit was infested with any rodents. However, the landlords did not deny the tenant's testimony that Bed and Breakfast guests were sometimes permitted to smoke when the rental unit was advertised to the tenants as non-smoking. That is also a requirement of the tenancy agreement. Where a landlord fails to comply with the *Act* or the tenancy agreement, the tenant's recourse is to file an application for dispute resolution seeking specific orders for the landlord to comply with, rather than refusing to pay rent.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

The tenant did not lead any testimony with respect to any damage or loss other than to say that he has cancer, but did not give any testimony as to how smoking or any existence of rodents caused the tenant to suffer damages. I find that the tenants have failed to establish element 1 in the test for damages.

Similarly, the tenant did not lead any evidence with respect to the cost of emergency repairs made by the tenants and I dismiss that portion of the tenants' application.

The tenant led no evidence with respect to the request to serve documents in another way than provided by the *Act*, and I dismiss that application.

The tenants did not pay a filing fee, and therefore cannot expect to recover one from the landlords.

With respect to the landlords' monetary claim, the landlords already have a monetary order for unpaid rent, and ordering it again would be double jeopardy.

The landlords attempted to re-rent the rental unit, but advertised at a lower amount. Therefore, I find that the landlords have not fully mitigated, but have established a claim of loss of rental revenue in the amount of the advertisement, \$1,695.00, and I dismiss the \$385.00 claim for the differential to the end of the fixed term.

The tenancy agreement provides for liquidated damages, which is a pre-determined estimate of the costs associated with re-renting if the tenants breach the tenancy agreement. I find unpaid rent to be a

fundamental breach of the tenancy agreement, and I am satisfied that the landlords have established the \$875.00 claim. However, the landlords' claim of \$30.00 for advertising is included in the liquidated damages, and I dismiss that portion of the landlord's application.

I have reviewed the landlords' evidentiary material and it is not clear to me why the landlords blame the tenants for the inability to rent the Bed and Breakfast suite and the necessity of refunding scheduled guests' pre-paid fees, other than an erroneous claim by the tenant about rodents. I have also reviewed the pest control documentation and although there is no evidence that would satisfy me of a rodent infestation, the tenant has not breached the *Act* or the tenancy agreement by making such a claim. There is evidence of a rat or rats near the shed, but not inside the dwelling. Therefore, I dismiss the landlords' applications for loss of rental revenue for the Bed and Breakfast suite and for the cost of the pest control inspection.

I have also reviewed the move-in and move-out condition inspection reports, both of which are signed by the tenant agreeing to the condition, which includes garbage left behind. The landlords claim only \$100.00 of a \$300.00 invoice for garbage removal. I find the amount to be reasonable, and I grant the claim.

I do not accept that the tenants ought to pay travel expenses of the landlords for carrying out duties of a landlord. Service of some documents could have been effected by a process server or registered mail, and costs associated with re-renting are included in the liquidated damages term of the tenancy agreement.

The tenant did not dispute the landlord's testimony that the tenants failed to move out when served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or when served with the Order of Possession, causing the landlords to incur costs for a Writ of Possession and a Court Bailiff, and I find that the landlords have established the \$220.00 and \$170.00 claims.

The *Residential Tenancy Act* provides for recovery of a filing fee but not for costs to prepare for a hearing or registered mail costs. The *Act* also prohibits claims for libel or slander.

The landlords currently hold a security deposit in the amount of \$875.00. Having found that the landlords have established a claim totalling \$3,060.00, I order that the security deposit be set off from that amount. Also, since the landlords have been partially successful with the application, the landlords are entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$875.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants for the difference of \$2,285.00.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby order the landlords to keep the \$875.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,285.00.

This order is final and binding and may be enforced.

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 14, 2017

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Residential Tenancy Branch