



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord   OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an applications for Dispute Resolution filed by the Landlord in which the Landlords are seeking an Order of Possession, a monetary order for unpaid rent, compensation for loss or damage under the Act, regulations and the tenancy agreement, to retain the Tenant's security and pet deposits and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by personal delivery on April 19 by a process server in accordance with section 89 of the Act.

The Tenant confirmed receiving the Landlord's hearing package.

### Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?
4. Is there a loss or damage to the Landlords and are the Landlords entitled to compensation?
5. Are the Landlords entitled to retain the Tenant's security and pet deposits?

### Background and Evidence

This tenancy started on July 15, 2017 as a fixed term tenancy with an expiry date of June 30, 2018. Rent is \$1,700.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$850.00 and a pet deposit of \$850.00 both on June 21, 2017. The Landlord said a condition inspection was completed at the start of the tenancy. The Tenant said no condition inspection report was completed and if there was she did not get a copy.

During the start of the hearing the Landlord said the Tenant had moved out on May 5, 2018 so the Landlord's are withdrawing the request for an Order of Possession. The Landlord said they are still requesting their monetary claims for unpaid rent and for loss or damage. .

The Landlord said that the Tenant did not pay all of the rent for the month of April 2018. The Landlord said the Tenant paid \$850.00 in April 2018 and as the rent is \$1,700.00 there was \$850.00 of unpaid rent. As a result, on April 2, 2018 the Landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2018 on the door of the Tenant's rental unit. The Landlords continued to say that they made a mutual agreement with the Tenant to end the tenancy, but the Tenant changed the terms so the Mutual Agreement was not agreed to and is voided. The Landlord continue to say that the Tenant did not pay the May 2018 rent and they were only give notice by the Tenant on May 1 that she was moving out on May 5, 2018. The Landlord said this is not proper notice to end a tenancy and they lost the opportunity to rent the unit for May 2018. The Landlord said they are requesting the May 2018 rent in the amount of \$1,700.00. Further the Landlord said the Tenant also owes utilities from May 1 to May 5, 2018 in the amount of 26.92 for hydro and \$31.35 for gas for a total of \$58.27.

Further the Landlord said the Tenant did not clean the unit well and they had to hire a cleaning service at a cost of \$500.00 as well as purchase clean supplies at a cost of \$36.94. The Landlords said they submitted an email from the Tenant dated May 14, 2018 that says she is not cleaning the rental unit. The Landlord said they are requesting to be awarded these amounts.

In addition to these claims the Landlords requested to recover the cost of the process server in the amount of \$100.82, postage costs of \$25.88 and to recover the filing fee of \$100.00 for this application. The Landlords said their total claim is \$3,371.86.

The Tenant she has a number of monetary claims as well but first she would respond to the Landlords monetary claims. The Tenant said she thought she had an agreement that the Landlord would use he security deposit of \$850.00 for the balance of the April 2018 rent, therefore the Tenant said she does not believe she has any rent owing. Further the Tenant said she was only in the rental unit for 5 days in May 2018 so she only owes want the 5 days would cost. The Tenant said the Landlords knew they were ending the tenancy with the 10 Day Notice to End Tenancy for Unpaid Rent, therefore they should have advertised the unit in April and they could have had a new tenant in

May 2018. The Tenant said she only owes rent and utilities for the first 5 days in May 2018.

Further the Tenant said the rental unit was not clean when she moved in and she cleaned the carpets at least 2 times because of a cat urine smell in the unit. The Tenant continued to say she did clean the unit and the Tenant submitted an email from the Landlord to her says that she did some cleaning. The Tenant said that she does not owe the Landlord's anything for cleaning the rental unit.

The Tenant continued to say that she was told by the Residential Tenancy Branch that she could make her monetary claims against the Landlords at this hearing.

The Arbitrator told the Tenant that she was miss informed as she must make an application in order to make any monetary claims against the Landlords. The Arbitrator said the Tenant could make an application up to 2 years after the tenancy has ended.

The Landlords said in closing that giving notice to end a tenancy on May 1, 2018 for May 5, 2018 is not proper notice and so they believe the Landlords lost the May 2018 rent because of the Tenant's actions.

The Tenant said in closing that she believes the Landlords have not acted in good faith and she only owes them for the first 5 days in May 2018. As well the Tenant said she will be making an application for compensations for loss and damages.

### Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further section 21 of the Act says: Tenant prohibition respecting deposits

Section 21: Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

The Tenant said that the Mutual Agreement to End Tenancy with the Landlord included the security deposit as a rent payment. The Tenant said she agreed to this.

The Landlord said the Tenant changed the dates from September 30, 2018 to October 31, 2018 on the Mutual Agreement to End Tenancy and he did not agree with the date change, therefore the Mutual Agreement to End Tenancy is not valid. The Tenant submitted the Mutual Agreement to End Tenancy and agreed she changed the dates.

Consequently I find the Mutual Agreement to End Tenancy dated March 28, 2018 is void as the changes are not initialed by both parties indicating they agree with the changes. As a result the Tenant does not have authorization from the Landlord to use the security deposit of \$850.00 as a rent payment. Therefore I find the Tenant does have unpaid rent of \$850.00 for April 2018.

Further as the Tenant disputed the 10 Day Notice to End Tenancy for Unpaid rent and then moved out of the unit May 5, 2018 before the hearing to dispute the Notice which was on May 9, 2018. The Tenant effectively accepted the Notice to End Tenancy. The Tenant then gave written notice on May 1, 2018 to end the tenancy on May 5, 2018. I find the Tenant ended the by giving written notice to the Landlord.

I find that the Landlord could not predict when the tenancy was ending as the Tenant had filed a dispute of the Landlord's Notice to End Tenancy, therefore as the Tenant was in the rental unit duringn May and did not give written notice until May 1, 2018. As the Landlords could not predict when the tenancy was ending and the Tenant was in the unit in May 2018 the Landlords are entitled to the May 2018 rent of \$1700.00.

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. Consequently, I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$850.00 for April, 2018 and \$1,700.00 for May 2018. I award the Landlords these amounts.

Further unpaid utilities are treated as unpaid rent if the Landlords give the Tenant a formal demand to pay the utility bills. I find the Landlords have given the Tenant that demand in the application and therefore I award the Landlords \$58.27 in unpaid utilities.

With respect to the Landlords' claim for \$500.00 clean costs and \$36.94 for cleaning supplies, I reviewed the testimony and evidence and I conclude that the Tenant did some clean but also told the Landlords that they would have to clean the unit. Therefore I find on the balance of probabilities that the unit was only partially clean. Consequently, I award the Landlords' ½ the cleaning costs in the total amount of \$268.47.

With regard to the Landlords' claims for postage and the process server I find these claims are related to the Hearing not the tenancy and as such are not illegible claims. I dismiss the postage costs of \$25.88 and the process server costs of \$100.82.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit and pet deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,550.00
	Unpaid utilities	\$ 58.27
	Cleaning costs	\$ 268.47
	Recover filing fee	\$ 100.00
	Subtotal:	\$2,976.74
Less:	Security Deposit	\$ 850.00
	Pet Deposit	\$ 850.00
	Subtotal:	\$ 1,700.00
	Balance Owing	\$ 1,246.74

### Conclusion

A Monetary Order in the amount of \$1,246.74 has been issued to the Landlords. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: June 19, 2018

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Residential Tenancy Branch