



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: OPM, MNR, MNDC, MNDS, FF  
TENANT: OLC, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, compensation for loss or damage under the Act, regulations and tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order for the Landlords to comply with the Act, regulations and tenancy agreement and to recover the filing fee.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on June 14, 2018 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on May 17, 2018 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call the Tenants said they had moved out of the rental unit on June 30, 2018. The Landlord said that she has possession of the rental unit and she is withdrawing her request for an Order of Possession.

### Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Are there other damages or losses to the Landlord and if so how much?
4. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Have the Landlords complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started on August 1, 2017 as a fixed term tenancy with an expiry date of July 31, 2018. Rent is \$930.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$465.00 at the start of the tenancy. A move in condition inspection report was signed on August 1, 2017.

The Tenants said they believe the Landlord did not comply with the new tenancy agreement that they completed with the Landlord. The Tenant said they signed a new lease on April 24, 2018 to continue the tenancy and then the Landlord told them they had to move out because the Tenants did not tell the Landlord about a water leak in the unit. The Tenants said they signed the Mutual Agreement to End Tenancy dated May 8, 2018 under duress.

The Tenants were asked if the Landlord threatened them in any way. The Tenants said no but they felt they had to sign the Mutual Agreement to End Tenancy.

Further the Tenants said they found a new rental unit and gave the Landlord notice on June 20, 2018 that they were moving out on June 30, 2018. The Notice was given by text message.

The Tenants said they believe the Landlord did not comply with the Act, regulations and tenancy agreement so they are not responsible for the July 2018 rent of \$930.00. As well the Tenants said they are very stressed as they have a new baby and they are living on only one income at the present time. The Tenant said paying this rent as well as the rent at their new unit it would be a financial hardship for them.

The Landlord said that the Tenants and the Landlords signed a Mutual Agreement to End the Tenancy dated May 8, 2018 with an effective vacancy date of July 31, 2018. The Landlord continued to say the Tenants gave her notice on June 20, 2018 that they were moving out of the unit on June 30, 2018. The Landlord said this was not the agreement on the Mutual Agreement to End Tenancy signed May 8, 2018 and it is not proper notice to end a tenancy. The Landlord said the Tenants are responsible for the July 2018 rent of \$930.00.

Further the Landlord said she advertised the unit starting June 11, 2018 and her father has showed it a number of times but they have not rented it as of yet. The Landlord

said if they rent it before July 31, 2018 she will prorate the July 2018 rent and return that portion to the Tenants if she is successful with her application.

The Landlord said in closing that they signed a Mutual Agreement to End Tenancy with a effective date of July 31, 2018 so the Tenants are responsible for the July 2018 rent as she has not been able to put new tenants into the unit as of yet. Further the Landlord said the Tenants notice to move out on June 20 for June 30, 2018 was improper notice. The Landlord said they have tried to mitigate the Landlord's losses by advertising and showing the rental unit to potential tenants.

The Tenants said in closing that they are stressed and are living on one income and they do not want to pay the July 2018 rent as they moved out of the unit on June 30, 2018. The Tenants asked for a fair decision.

### 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.

Section 44 (c) of the Act says a tenancy may be ended by a written Mutual Agreement to End Tenancy that is signed by both the Tenants and the Landlords. The parties both submitted the completed and signed Mutual Agreement to End Tenancy dated May 8, 2018. It should be noted this date is after the date of April 24, 2018 which is the date on the new Tenancy Agreement therefore the Mutual Agreement to End Tenancy cancels the new tenancy agreement.

I find that the Tenants have not paid the July 2018 rent and The Mutual Agreement to End Tenancy indicates the tenancy will end on July 31, 2018; therefore the Tenants are responsible for the July 2018 rent. Consequently, I dismiss the Tenants request to absolve them of their responsibility for the July 2018 rent of \$930.00.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$930.00 for July 2018. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$930.00.

Further I find the Landlord has complied with the Act, regulations and tenancy agreement; therefore the Tenants' application is dismissed without leave to reapply.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants 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 Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 930.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$ 1,030.00
Less:	Security Deposit	\$ 465.00
	Subtotal:	\$ 465.00
	Balance Owing	\$ 565.00

### Conclusion

A Monetary Order in the amount of \$565.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply and the Tenants are ordered to bear the cost of \$100.00 for their application which they have already paid.

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: July 11, 2018

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Residential Tenancy Branch