



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP MNDCT RP  
                              CNR MNRT  
                              MNDCL-S, MNRL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlords. The hearing did not conclude on the first or second dates scheduled, and my Interim Decisions were provided to the parties after the first and second scheduled dates.

The tenants sought a number of orders and withdrew all on the first date of the hearing with the exception of a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. 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 security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the tenants and both landlords attended on all scheduled dates, and the tenants were accompanied by a Housing Advocate and a translator, who was affirmed to well and truly interpret the hearing from the English language to the tenants' Native language and from the tenants' Native language to the English language to the best of his skill and ability. The landlords also attended on all scheduled dates accompanied by an agent and another person to assist.

The landlords' agent gave affirmed testimony and was cross examined by the tenants and the Housing Advocate. Both landlords and one of the tenants also testified, and the tenants called one witness who gave affirmed testimony. All who testified were subject to cross examination, and the parties were given the opportunity to give submissions.

During the course of the hearing, the parties agreed to amend the Style of Cause to change the spelling of the landlords' surname on the tenants' applications, and the frontal page of this Decision reflects that amendment.

The Interim Decisions specify instructions with respect to evidence, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

The issues remaining to be decided are:

- 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 overpayment of rent, recovery of rent paid, and loss of food?
- 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 the cost of removing the tenants' belongings?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** (FI) testified that this fixed term tenancy began on May 1, 2017 and was to expire on April 30, 2018 thereafter reverting to a month-to-month tenancy which ultimately ended on March 24, 2018, when the keys to the rental unit were returned to the landlords. Rent in the amount of \$1,000.00 per month was payable on the 1<sup>st</sup> day of each month. During the first month of the tenancy the landlords collected a security deposit from the tenants in the amount of \$300.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a ground level suite, and the landlords reside in the upper level of the home. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords claim 2 months of unpaid rent for March and April, 2018, as well as \$330.00 unpaid rent for February. On February 10, 2018 the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated February 10, 2018 and contains an effective date of vacancy of

February 20, 2018 for unpaid rent in the amount of \$330.00 that was due on February 1, 2018. The tenants have not paid any rent since.

On February 24, 2018 the landlords served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated February 24, 2018 and contains an effective date of vacancy of May 1, 2018, not knowing that the tenants had planned to move out in March. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The tenants did not give the landlords any notice to vacate, however a moving truck was there a week before the tenants returned the keys on March 24, 2018.

The tenants delivered written notice to the landlords claiming mice, a clogged sink and other issues on January 29, 2018, threatening to start an application for dispute resolution and wanting to discuss issues with the landlords. The landlords were out of town until February 3, however their son received the letter and advised the landlords to contact the tenants and see if they could get a pest control person for rodents. The pest control person was not able to access the rental unit until February 6. The tenants are rarely home before 4:00 p.m. and the tenants couldn't make it work with their schedule.

On February 13 the landlords retained a general contractor who did an assessment and estimate. The repair work was to repair a hole in the back of a kitchen cupboard which the tenant claimed was an access point for rodents. Then on February 17 the contractor went there again with police escort. He completed the work and provided material, and has given an invoice for 2 visits totalling \$472.50. It included removal of containers and household goods that the tenants should have removed. The police had been contacted by the landlord due to the tenant's refusal of access. The police spoke to the tenant and the landlord, and told the landlord not to have any direct contact with the tenant without police presence, and to give notice to enter and call police to assist.

The landlords gave notice to enter which is dated February 13 and was posted to the door of the rental unit that day. On February 16 the landlord posted a notice to enter for the following day; the tenants said it was an emergency in their letter. The landlords claim \$150.00 as against the tenants, being \$75.00 for each of 2 hours charged to remove items and clean the areas for the February 17, 2018 visit. A copy of the Invoice has been provided for this hearing.

The landlords do not deny that it was an illegal suite, however it has a full kitchen and bathroom and neither party had any problem with that until January 29, 2018.

The landlords claim unpaid rent for February, 2018 in the amount of \$330.00, rent for March in the amount of \$1,000.00, loss of rental revenue to the end of the fixed term in April, 2018 in the amount of \$1,000.00, \$150.00 for the contractor's invoice and recovery of the \$100.00 filing fee.

With respect to the tenant's monetary claim, the landlord's agent testified that although no move-in condition inspection report was completed, the parties did a "walk-through" together, including the entire property and the landlord has provided photographs as evidence for this hearing of its condition prior to this tenancy. The tenants were desperate looking for housing, and the suite had been vacant for some time. The tenants now claim that the walkway was blocked, but the landlords use that as well, and wouldn't do that. The photographs provided by the tenants have been staged.

The tenants also claim that the landlord collected \$1,000.00 for April, 2017 rent, but they didn't and the tenancy began on May 1, 2017. The \$1,000.00 was paid in April, and the receipt clearly says "Rent for May, 2017," and the agreement was to begin on May 1, 2017.

The tenants have also claimed that from January 19, 2018 onward, they didn't reside in the rental unit, but the landlord disagrees. The tenants were coming and going from the rental unit and their belongings were there.

The tenants have also claimed in a letter of January 29, 2018 that they caught and trapped 51 mice, however on January 14 the tenant called the landlord saying that a mouse had been caught in one of 4 traps set in May, 2017 by a pest control company and the tenants refused to touch it asking that the landlord do so. The landlord's sister went and removed it. There were no indications from the tenants of problems until January 25 while the landlord was in Hawaii; the tenant said they caught over 50 mice but would not remove one, and claim that they didn't live there after January 19. So from January 14 to 19, when the tenants claim they didn't live there, also claim they caught 51 mice, which makes no sense.

The landlords' position is that if the tenants hadn't caused, they contributed by attracting rodents. The landlords live there as well and traps were placed in their unit and poison outside the building; only one was caught in the chimney. The tenants were told by pest control they need to use proper food storage and landlords' photographs show they didn't take care of that or clean the rental unit suite. Boxes of fruit had been donated to the tenants and were left piled up outside. The contractor also found that the interior was extremely unclean, including juice under the fridge. The tenants also claim for loss of food they had to discard, but the landlords should not be responsible because the tenants were warned about storage and attracting rodents.

All claims made against the landlords refer to a 2 week period, and no issues existed for 10 months prior. The landlords went to great lengths to assist the tenants, and the tenant's allegation of the landlord walking in on his wife and other allegations are offensive to the landlords and not true.

**The first landlord** (MK) testified that the tenancy agreement clearly states that the tenancy began on May 1, not April, and the receipt given for rent was for the month of May. The security deposit collected was for \$300.00 and was paid in mid-May with a receipt provided to the tenant.

All was fine until mid-January when the tenant said they found a mouse. A trap was set and on January 14 the tenant called the landlord to remove a mouse caught in the trap; the tenant wouldn't touch it. The landlord was getting radiation for bone cancer and in pain, so the landlord's sister attended the rental unit to remove the mouse. Nothing was mentioned about other mice. The tenant later claimed he caught 50 mice, but the landlord didn't believe that because they wouldn't touch one mouse. The landlord contacted pest control, which was difficult to coordinate with the tenants, however a report was made by the pest control personnel stating that he found 1 little hole in the corner of the kitchen and suggested that the hole be filled. The landlord hired a contractor who repaired the hole on February 17 but it was not in the wall, but inside the cupboard so there was no access for rodents to enter.

The tenants claim that food went bad, but they stored it outside in boxes and was told by the pest control personnel that food had to be sealed. The technician even found a fruit carton behind the fridge. If there were mice, the tenants brought them into the home. The landlords also live in the rental home and don't want rodents in there either. The landlord did not see the feces or photographs of the tenants until served with evidence for this hearing.

**The second landlord** (ZK) testified that the tenants had requested a meeting to resolve issues and the landlords agreed. It was arranged for the next day, and the tenants would not answer the door. The tenant was playing music, and opened the door about 6 inches and said he didn't want to talk. The tenant's allegation of hitting him and ripping his shirt and threatening to kill him is a total lie. The tenant's wife never speaks, only the husband speaks, and the tenants were successful in getting new housing in a few months due to those allegations instead of having to wait like most with BC Housing.

**The tenant** testified that he wasn't able to live in the rental unit for January or February, 2018 due to the infestation of rats and no response by the landlords. The landlords wouldn't allow the tenants to set out poison due to the landlords' dog, and permitted traps only. The tenants caught 35 mice and rats and gave them to the landlords by placing them

by the garbage can in a box so the landlords would know to deal with it. The tenant took photographs of all mice and rats that he caught but deleted them from his phone. The tenant called the landlord to retrieve one at first.

In May, when the tenants moved into the rental unit, the landlord said to put heavy stuff in front of the kitchen doors so that rats couldn't get out of the cabinets. The tenant told the landlord about hearing rodents in walls, which the landlord said was common in the City and to get used to it. The tenant didn't ask an advocate to call pest control because he was afraid he'd be evicted if he complained and didn't know if he could find another home.

The tenant also testified that the music referred to by the landlord was on the radio, to keep the rats out. During January, the tenant gave the landlords 7 letters and went to the landlords' door every day saying there were rats. Every time he talked to the landlord about getting pest control, the tenant was told it was too expensive, that the tenants would have to deal with it, and that the landlord was too busy.

The rental unit was illegal and the tenants were new-comers to the country and were taken advantage of by the landlords, and an illegal suite was not explained to them.

The tenants claim the equivalent of 2 months rent for the rodent infestation, \$500.00 for lost food and \$1,000.00 for April, 2017 rent paid and not being able to move in until May 1, 2018.

**The tenants' witness** (MN) testified that during the first week of January, 2018 the witness saw a barricade in the hallway of the rental unit and asked the tenant about it. The tenant replied that he was dealing with rats and that he had to check traps. The tenant said he caught 5 rats in 1 night, and asked the witness for gloves so that he could take care of them.

The tenants have also provided letters from advocates and photographs, some of which have been provided several times.

### Analysis

I have reviewed the evidentiary material, and I am satisfied that the landlords have established that the fixed term tenancy began on May 1, 2017 and was to expire on April 30, 2018, for rent in the amount of \$1,000.00 per month, and that the tenants paid the landlords a security deposit in the amount of \$300.00. The tenancy agreement and the receipts provided as evidence for this hearing corroborate that testimony.

The landlords claim unpaid rent for the months of February and March, 2018 totalling \$1,330.00. The tenants paid rent up to January, 2018, but the landlords claim that the tenants owed \$330.00 for February's rent, and the landlords have provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities showing that amount. The tenants claim that they didn't reside in the rental unit for January or February due to a rat infestation that the landlords failed to deal with. However, the *Residential Tenancy Act* requires a tenant to pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. The tenant did not deny that rent was not paid in full for February, and I am satisfied that the landlords have established the **\$330.00** claim.

The tenant did not dispute the landlord's testimony that the keys to the rental unit were returned to the landlords on March 24, 2018, and that the tenants did not pay rent for March, 2018, and I find that the landlords have established the **\$1,000.00** claim for unpaid rent.

Where a party makes a 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 any damage or loss suffered.

The landlords have not provided any evidence of any attempts to re-rent the rental unit, and do not deny that it was an illegal suite. Therefore, I find that the landlords have not mitigated any loss suffered and would not have been able to re-rent for April 1, 2018 by no fault of the tenants, and the landlords' claim for loss of rental revenue is dismissed.

I have also reviewed the Invoice of the general contractor and the letter he provided, and I agree with the landlords that the tenants insisted that pests existed in the rental unit and the landlords had an obligation to ensure entry points for rodents were remediated. The letter of the general contractor states that he noticed very dirty kitchen, dried juice under the fridge, garbage and boxes in the kitchen and that he cleaned the cabinets and the floor. It is obvious that the tenants did not clean or prepare for the repair. I find that the landlords have satisfied the 4-part test for damages amounting to **\$150.00** for the general contractor.

The landlords have not provided any evidence of any costs associated with removal of the tenants' items at the end of the tenancy, and I dismiss that portion of the landlords' claim.

The tenants have applied for monetary compensation for damages caused by an infestation of rodents, and the onus is on the tenants to satisfy the 4-part test.

I find that the majority of the letters of support for the tenant and statements provided by others are based on what the tenant told the writers. Two of the letters from a Chaplain and Refugee Support Mobilizer state that the writer saw the rental unit on January 31 and witnessed the outside of the house full of old wood, wire, other construction materials and garbage, as well as mouse traps and rodent feces inside the rental unit. I find the balance of both of those letters to be hear-say and not actually witnessed by the writer.

Another letter from a volunteer for a cancer car program states that the writer went to the rental unit in November, 2017 and the yard was messy with garbage and other items to step over or around, including trash thrown into a trailer. The landlords' agent testified that it was staged by the tenant, and the landlords have provided a letter from a previous tenant who also disputes that the landlords kept it in that manner.

The tenant's impact statement states that he caught 52 rats with his bare hands, and has provided video evidence of mice, not rats, and in each video, the tenant is wearing rubber gloves and holds the dead mouse out away from his body on cardboard. The tenant obviously has a problem with rodents and had the landlord's sister remove the first one. I also find it very convenient to provide photograph and video evidence and testify that the photographs of 35 mice in a box were deleted from the tenant's phone. I simply do not believe the tenant, but I accept there were mice.

I also accept the evidence and testimony of the tenants leaving food items, contrary to advice given from the professional, and attracting the rodents. I find that the tenants have not established that any damage or loss suffered for loss of food and any inability to remain in the rental unit was a result of the landlords' failure to comply with the Act or the tenancy agreement, and the tenants have not established mitigation. The tenants' application for monetary compensation is dismissed.

Where a landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property the landlord must provide the tenant with compensation equal to one month's rent. In this case, the landlord issued such a notice, but had also issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities prior. I find that the landlords are not required to compensate the tenants because the 10 Day Notice was effective prior to the issuance of the Two Month Notice.

In summary, I find that the landlords have established a \$330.00 claim for February, 2018 rent; \$1,000.00 for March rent and \$150.00 for the contractor. Since the landlords



have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee. I order the landlords to keep the \$300.00 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 in the amount of \$1,280.00.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlords to keep the \$300.00 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 \$1,280.00.

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: July 23, 2018

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Residential Tenancy Branch