



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on September 7, 2018, wherein the Tenants sought monetary compensation from the Landlord in the amount of \$13,500.00 as well as recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on January 10, 2019. Initially only the Landlord called in. At 1:39 p.m. the Tenant, D.T., and his spouse, J.T., called in. They claimed they were told someone from the residential tenancy branch would be calling them. Once the Tenants joined the teleconference, the participants were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

### Background Evidence

The parties confirmed that they did not have a written tenancy agreement.

The Tenants claimed the sum of \$13,500.00 for services rendered pursuant to an alleged oral contract whereby the Tenants claimed the Landlord was to pay the Tenant, D.T. for renovation services to the rental unit.

The Landlord denied such an agreement existed and testified that the Tenants were to pay \$950.00 per month in rent. The Landlord further stated that the Tenant failed to pay rent as required such that the sum of \$8,550.00 was outstanding.

The Tenant, D.T., claimed that rent was \$700.00, not \$950.00 as claimed by the Landlord. D.T. further confirmed he has not paid the \$700.00 per month as he believes the Landlord owes substantially more for his renovation services.

Text messages provided in evidence by the Landlord confirm the Landlord agreed to rent payments of \$700.00 per month with a \$250.00 credit to the Tenants for "upkeep". In one such message the Landlord wrote:

"You promised me that you wouldn't over-do it and you'd pay 700 a month...you promised me that...the rent is 950, you get 250 off maximum a month."

Additionally, those text messages confirm that the Landlord asked the Tenants to pay their rent as early as May of 2018. The Tenants' responses indicate they initially promised they would pay the rent as required. Further text messages show that the Landlord continued to ask for rent, informed the Tenants he would not be able to pay his mortgage without the rent payments, and pleaded with the Tenants to pay rent.

Although the Tenants initially responded that they would pay rent, and provided a variety of reasons for why they couldn't pay immediately (such as difficulty making promised electronic transfers) they then began responding that it was the Landlord who owed them money.

The communication between the parties shows an increasing level of threatening behaviour on the part of D.T. As the Landlord continued to plead for rent from the Tenants, the Tenant, D.T., threatened to sue the Landlord for money owed pursuant to the alleged renovation contract. Additionally, D.T. threatened to commence a law suit against the Landlord for personal injury related to an alleged fall from a deck as well as health issues he claimed his spouse suffered from exposure to rodent feces in the rental

unit. The Tenant, D.T., also threatened to involve the Landlord's wife and suggested he was "not fit to have his daughter". In one such message the Tenant wrote "I will go after you with everything I can think of". In one other message the Tenant threatens to post photos of a dead cat in the local newspaper. In another message the Tenant writes: "I'll just show up one night and surprise you. It will be fun for sure. Love you bro."

In these text messages the Tenant also alleged that he spent the sum of \$3,000.00 on the rental unit; subsequently, that figure then increased to \$14,600.00 and then \$17,700.00. Notably, in the claim before me the Tenants sought the sum of \$13,500.00.

The Landlord testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 4, 2018. A review of branch records confirms that although the Tenants applied to dispute the Notice, they abandoned their application. (The file number for that application is noted on the unpublished cover page of this my Decision.) The Landlord stated during the hearing that he was awaiting the hearing date for this application as he was informed by the Tenants they had applied to dispute the 10 Day Notice.

The Landlord confirmed it was his intention to end this tenancy as soon as possible. He stated that he suffers from Post-traumatic stress disorder which is exacerbated by the conflict with the Tenants.

### Analysis and Conclusion

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge.

Arbitrators have jurisdiction over residential tenancy matters, they do not have jurisdiction over employment contracts.

The Tenants' monetary claim relates to an alleged oral contract whereby the Tenants claim the Landlord was to pay them for renovations to the rental unit.

The Landlord agreed that the Tenants were to be credited for their services in the amount of \$250.00 per month from the original \$950.00 in rent such that the monthly

rent is \$700.00 per month. The Tenant, D.T., also testified that monthly rent is \$700.00 per month. I therefore find, pursuant to section 62(3) of the *Act*, that rent is payable in the amount of \$700.00 per month and that this sum includes a \$250.00 credit per month for the Tenants' renovation services.

I find that any amounts over and above this "upkeep" \$250.00 credit, is separate and apart from the tenancy agreement. The evidence before me confirms that the parties had a significant disagreement as to the work performed by the Tenants. Such contractual disputes are outside the jurisdiction of the *Residential Tenancy Act*, unless specifically provided for in a written tenancy agreement. In this case, no such written tenancy agreement existed.

I therefore find that the determination of the Tenants' monetary claim for alleged renovation services (over and above the monthly \$250.00 credit) is outside the terms of this tenancy and therefore not within my jurisdiction. The Tenants may pursue that claim in the B.C. Provincial Court (Small Claims Division).

Pursuant to section 26 of the *Residential Tenancy Act*, the Tenants are required to pay rent as and when due. They are not permitted to withhold rent simply because they believe they are owed money from the Landlord for their renovation services or otherwise, unless they have a legal reason to do so. The evidence before me, and in particular the text messages between the Landlord and the Tenant D.T, suggest the Tenants had no intention to pay rent and in fact resorted to threatening the Landlord as a means to avoid paying rent.

The evidence before me also confirms that the Landlord continually requested that the Tenants pay rent. This culminated in the Landlord issuing a 10 Day Notice to End Tenancy for unpaid rent. Although the Tenants applied to dispute this 10 Day Notice, they abandoned their claim, the effect of which being that the Notice remains undisputed. The parties are reminded of the conclusive presumption contained within section 46(5) of the *Act*.

Although it is clear the Tenants have not paid rent as required, the determination of the amount of outstanding rent is not an issue before me as the only claim contained within the Tenants' Application is their monetary claim for \$13,500.00. The Landlord remains at liberty to apply for an Order of Possession and Monetary Order pursuant to the 10 Day Notice, or to issue a further 10 Day Notice to End Tenancy.

The parties are further reminded of *Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant – Responsibility for Residential Premises* which provides in part as follows:

**RENOVATIONS AND CHANGES TO RENTAL UNIT**

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Conclusion

The parties agreed the monthly rent of \$950.00 would be reduced by \$250.00 for upkeep performed by the Tenants such that they were to pay \$700.00 per month in rent.

The Tenants claim for additional monetary compensation for renovations pursuant to an alleged oral agreement is beyond the terms of their tenancy agreement and therefore outside the jurisdiction of the Residential Tenancy Branch.

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 16, 2019

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Residential Tenancy Branch