



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MNDC

### **Introduction**

This hearing was convened in response to an application filed by the tenants seeking a monetary order for compensation for damage and/or loss. The tenants filed their original application on June 16, 2010 seeking \$3,000.00. That application was amended on October 22, 2010 seeking \$8,194.00.

Both parties appeared the hearing and gave evidence under oath.

### **Issues(s) to be Decided**

Are the tenant's entitled to the compensation sought?

### **Background and Evidence**

The landlord and the tenants entered into a 12 month fixed term tenancy agreement ending December 31, 2010. Rent was fixed at \$2,100.00 per month. In or about April 2010 the landlord found herself in financial difficulties and wished to sell the property. The parties then entered into a mutual agreement to end the fixed term tenancy early. In exchange for the mutual agreement to end the tenancy early the landlord agreed to pay the tenants compensation of \$6,000.00. In initially the tenants thought the compensation should be in the neighbourhood of \$10,000.00 however, then the figure of \$7,000.00 was discussed. The landlord advised the tenants that in order to pay them \$7,000.00 she may have to cash in RRSPs. In the end, the sum of \$6,000.00 was agreed to.

The tenants agreed that the landlord would pay \$3,000.00 on April 12, 2010, prior to the tenants vacating the property and the balance of \$3,000.00 when the tenants vacated. All parties agree that the \$6,000.00 payment did not include the \$2,100.00 security deposit. The tenants submitted a copy of a written agreement in these terms, however that agreement is not signed by either party. The landlord did not deny that there was a verbal agreement between the parties as to the payments to be made. The landlord testified that she had a firm belief that her property would sell quickly given the then level of real estate activity in Vancouver.

The tenants cashed the landlord's first cheque in the sum of \$3,000.00 on April 19, 2010. The tenants vacated the rental unit on June 13, 2010. On June 24, 2010 the tenants cashed a cheque in the sum of \$2,100.00 representing the security deposit paid by the tenants.

The landlord testified that due to financial limitations she was unable to pay the \$3,000.00 balance due to the tenants on the date the tenants vacated the property. The landlord submits that she was awaiting the proceeds of the sale at which time she would pay the \$3,000.00 to the tenants. The tenants say that the landlord did have access to funds, however the landlord states that she was already overdrawn on her bank account from April until June 2010.

On June 17, 2010 the tenants filed an Application for Dispute Resolution seeking the \$3,000.00 balance owing from the landlord. The landlord submits that despite efforts by her real estate agent the sale of the property took longer to complete than anticipated. The property eventually sold on July 22, 2010 after which the sale completed and funds were disbursed to the landlord's lawyer. The landlord's lawyer wrote to the tenant on July 31, 2010 confirming that he had \$3,000.00 in trust to pay to them as soon as they signed the enclosed Full and Final Release and Acknowledgement of Payment.

The landlord submits that on August 2, 2010 the tenants refused to accept the \$3,000.00 payment and claimed payment of additional monies as general and aggravated damages for the landlord's "high handed conduct". The landlord's counsel confirms he still has the \$3,000.00 in his trust account awaiting disbursement to the tenants. Counsel for the landlord says he was served with the amended Application for Dispute Resolution on October 25, 2010 filed October 22, 2010 in which the tenants revised their amount of their claim from the original \$3,000.00 the parties agree is owing to \$8,194.00. In the amended claim the tenants seek recovery of \$100.00 in filing fees, \$94.00 to serve the landlord with their application, \$3,000.00 owing and \$5,000.00 in aggravated damages.

The tenant says the aggravated damages are sought because the tenant breached the terms of their agreement by refusing to pay the agreed compensation. The tenants say they were induced to accept \$6,000.00 which they believe is less than what they might have been entitled to in order to reduce the stress of protracted negotiations. The tenants submit that they were attempting to conceive a child and stress would be detrimental to conception. The tenants submit that the landlord was aware that they needed to minimize their stress level. Further, that the landlord was made aware of the death of one tenant's mother which added further to their stress. The tenants say they believed they were entitled to \$10,000.00 but they would settle for \$7,000.00. The tenants say the landlord advised that \$7,000.00 would eat up her savings and she would have to dip into her RRSP and asked if the tenants would consider \$6,000.00 plus the damage deposit. The tenants accepted the sum on April 1, 2010. The tenants drafted an agreement but the agreement went unsigned.

The tenants say the landlord breached the agreement and did not take steps to mitigate the tenants' stress and anxiety which could have been achieved by paying the remainder of the compensation owed under the Agreement, rather the landlord only offered to provide the sum if the tenants signed a full and final release of their claim for aggravated damages and costs.

The tenants also say that the landlord made representations regarding her ability and willingness to pay compensation when the tenants vacated the property. The tenants say the landlord never disagreed with the terms of the agreement drafted by the tenants although the agreement was not executed by either party. The tenants say the landlord made negligent misrepresentations to the tenants and that there was a duty of care based on their special relationship, that the representations she made were untrue, inaccurate or misleading and that the landlord acted recklessly, not caring whether her representations were true or false knowing that the tenants would rely on the misrepresentations and that reliance would be detrimental to the tenants.

### **Analysis**

There is no dispute between the parties that \$3,000.00 remains owing by the landlord to the tenants. The only dispute is whether the landlord should pay aggravated damages of \$5,000.00 to the tenants and the costs of this application totaling \$194.00.

With respect to the aggravated damages a dispute resolution officer may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

In this matter, I prefer the evidence of the landlord. I find she was honest with the tenants when she found herself in financial difficulties which caused her need to sell the rental unit. She offered compensation to the tenants in exchange for their agreement to end the tenancy early. The testimony and submissions of the parties shows that they are not unsophisticated and together they negotiated the terms of their settlement. The tenants now wish to say that the landlord made false statements and negligent misrepresentations to induce the tenants to agree to the terms. Yet I find that the tenants have failed to show this to be true. In fact the evidence shows that the landlord

did reveal that she would have to dip into her RRSPs in order to pay them any more than \$6,000.00 in compensation. In my view this shows a great deal of forthrightness from the landlord and as it makes it clear to the tenants that while the landlord may have had funds amounting to more than the \$6,000.00 available, she did not wish to break into those funds. The evidence shows that the tenants accepted this and agreed to accept the payment of \$6,000.00.

The landlord then followed through on the first payment but the second payment was delayed. When the final payment was offered to the tenants 1.5 months after the tenants thought it was to be paid, the tenants refused to accept it. The tenants say that this is because the landlord's lawyer was demanding they sign a full and final release of all claims from the tenants against the landlord. This seems to be a common practice of lawyers and it would be remiss for any lawyer to do otherwise. Especially in these circumstances where the tenants had already filed a suit against the landlord with respect to these funds.

While the tenants originally filed their application on June 16, 2010 seeking the \$3,000.00 the landlord agreed she owed, the tenants submit that they did not suffer stress and made no claim therefor. However, the tenants say that from June 16 to October 22, 2010 they did suffer stress and aggravation which arose from the landlord's failure to pay the final \$3,000.00. The tenants submit that some of the funds they were expecting were to be used to buy a home. However their evidence is that they did make that purchase. The tenants submit that the stress they suffered affected their attempts to conceive a child. However, they did not submit evidence to confirm whether they did or did not conceive; nor did they offer up evidence to show how the landlord's actions affected whatever outcome occurred. One of the tenants lost her mother shortly after the end of this tenancy however the tenants have submitted little evidence to show how the landlord's delay in paying \$3,000.00 to them affected this sad event. Further, while the tenants say they were suffering severe stress no medical evidence was submitted with respect to their condition and the tenants testified they did not seek medical attention for the stress.

Overall I find that the tenants have failed to show how the landlord's failure to have the final payment available to them until approximately 1.5 months after it was due, caused them distress and/or humiliation such that aggravated damages should be awarded.

The landlord asked to end the tenancy early, the tenants agreed, the landlord offered compensation for ending the tenancy early, the tenants agreed to the sum offered. The only difficulty that arose is that the final payment was late in coming. The tenants have shown that they were suffering stress from purchasing a home, from their attempts to conceive a child and as a result of the death of one tenant's mother. I find that there is insufficient evidence to show that the tenants suffered stress due to the delayed payment of the \$3,000.00. In the alternative, if the tenants did suffer stress from this delayed payment it was due to their own refusal to accept the payment when it was offered on July 30, 2010 and wait instead until November 2010 for a hearing to determine the matter.

As the parties agreed that the sum of \$3,000.00 remains outstanding I will issue a monetary Order in favour of the tenants for that sum.

The tenant's claim for recovery of \$94.00 for service fees is dismissed as I have no authority to award costs other than the filing fees. With respect to the filing fees, I decline to award the tenants recovery of the fees paid for this application because the landlord has always been willing to pay the \$3,000.00 owed to the tenants which payment they declined, as the outcome of this hearing is that which the landlord had already offered I find this application was unnecessary and the landlord should not have to reimburse the tenants for this expense.

**Conclusion**

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.