



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND, FF  
                                 MNSD, O, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenants. The application by the landlord is for a monetary order for damage to the unit and recovery of the filing fee. The application by the tenants is for return of the security deposit, other and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy began September 1, 2010 with monthly rent of \$1200.00. The tenants paid what they believed to be a security deposit of \$600.00 however the landlord specifically requested first and last month's rent and not a security deposit. The rental unit is a secondary residence on an acreage owned by the landlord and the landlord occupies the main residence.

At the start of the hearing the landlord referred to evidence that he had submitted and it was initially unclear whether or not the evidence in question had been received by the Residential Tenancy Branch. The landlord requested an adjournment as he did not feel he would get a 'fair and impartial hearing', however as the evidence in question was in the landlord's file and this was clarified for both parties, the hearing proceeded.

The landlord stated during the hearing that he was no longer seeking a monetary claim for the following: \$75.00 for 'repair and paint holes in the walls', \$30.00 for garbage and recycling removal or \$200.00 for excessive electricity consumption as it could not be substantiated, therefore these portions of the landlord's claim are dismissed.

The landlord in this application is seeking the following:

Cleaning service	\$109.20
Repair/paint holes in walls WITHDRAWN	<del>\$75.00</del>
Garbage removal WITHDRAWN	<del>\$30.00</del>
Damaged gate	\$364.00
Excessive electricity consumption WITHDRAWN	<del>\$200.00</del>
Legal counsel	\$280.00
Harassment due to tenants home based business	\$500.00
<b>Total</b>	<b>\$1253.20</b>

The tenants in this application are seeking the following:

Rental of teaching space	\$200.00
Return of double damage deposit	\$1200.00
Alternate housing due to harassment by landlord	\$100.00
Loss of income (students)	\$400.00
Loss of recording contract	\$200.00
Loss of window to record CD	\$1200.00
Stress and abuse by landlord	\$1200.00
<b>Total</b>	<b>\$4500.00</b>

#### Landlord - Cleaning Costs

The landlord testified that the tenants did not thoroughly clean the rental unit and left food in the fridge and the floors dirty and that the landlord had to hire cleaners at the cost of \$109.20. The tenants maintained that they had thoroughly cleaned the rental unit but admitted that they 'may have' tracked in wet and snow due to the weather conditions during the time of their move out.

#### Landlord – Gate Damage

The landlord testified that on the morning of November 23, 2010, the landlord noticed the tenant driving past his residence at a high rate of speed. The landlord stated that he stepped out on to his walkway and observed the tenant open the gate, move her car forward, close the gate with force and then drive away. The landlord stated the previous night at 10:00PM he had checked the gate after coming back from the stable and everything was fine. The landlord testified that he went out and checked the gate after the tenant had left on the morning of November 23, 2010 he discovered that the gate was broken. The landlord stated that there had been no new snow impeding the closing or opening of the gate, that it was the actions of the tenant that caused the gate to break and there had never been an issue with operation the gate before.

The tenant testified that yes, she had left the property that morning and noticed the gate to be stiff to close and that it seemed frozen, but that she did not slam or force it closed. The tenant's theory as to why the gate was stiff was that due to the cold and the piston on the gate had been affected. Then tenant stated that she did not hear or see the gate break.

#### Landlord – Legal Fees

The landlord stated that he felt threatened by the tenants when he found out they had gone to the local police and made false accusations against the landlord. The landlord felt he needed to seek legal advice in regards to this harassment and the false accusations by the tenants and the landlord is seeking \$280.00 in compensation for his legal fees.

#### Landlord - Harassment

The landlord stated that he felt very harassed by the tenants when they stopped cooperating with him, avoided his phone calls, purposely left the heat and lights on when they were away for days at a time and reneged on their agreement to watch his property and feed his horse in his absence. The landlord stated that the tenants were not forthcoming regarding their home based business and the impact it would have on his property and peace and quiet enjoyment.

#### Tenants – Stress & Abuse, Alternate Lodging

The tenants testified that during their tenancy they were subjected to 'almost daily' harassment by the landlord and that the landlord would often phone, send emails or come to their door unannounced to make demands, typically regarding the agreement to property and horse sit. The tenants contend that the constant intrusions by the landlord into their lives caused them to lose a recording contract and made it impossible for the tenants to record a CD. The tenant's also stated that the landlord entered the house without their permission when they were away. The landlord stated that he had entered the tenant's residence on two occasions when the tenants were away and it was to ensure that the water line did not freeze and cause damage to the property. The tenants stated that after the incident with the gate that one of the tenants sought lodging elsewhere for fear of what the landlord may do. The landlord maintains that he has always been very cordial towards the tenants, loaned them furniture, provided breakfast for them on more than one occasion and provided the tenants with a washer and dryer after the start of the tenancy.

#### Tenants – Studio Rental, Loss of Clients, Loss of Recording Contract, Loss of CD Recording

The tenants stated that they did discuss having a home based business with the landlord and the landlord was fine with it, however the parties did not discuss the particulars of the home business IE: how many clients, how many trips to the property

etc. The tenants stated that they lost clients due to the landlord telling clients that they were trespassing and checking under the tenant's client's vehicles for potential oil leaks. The tenants stated that they believed it to be harassment and unreasonable for their clients to be required to open and close the gate behind them each time came on to or left the property. The tenants stated that some students expressed concern about coming back to the property and the tenants ultimately had to rent studio space off the property to continue their business. The landlord stated that he had spoken to two of the tenant's clients but that he had been very polite and cordial on each occasion and that he had never harassed the tenant's clients. The landlord stated that the tenants believed the entire property to be for their use and that they did not advise their clients to not wander all around the landlord's property.

### Tenants – Security Deposit

The tenants stated that they believed the \$600.00 payment they made to the landlord at the beginning of the tenancy to be a security deposit. The tenants stated that they asked the landlord for a written tenancy agreement on more than one occasion but that the landlord advised them that he liked to have verbal agreements. Both parties agreed in this hearing that proper move-in and move-out inspection reports were not completed. The landlord maintained that he was very clear when he asked the tenants for first and last month's rent at the start of the tenancy and that he did not request a security deposit from the tenants.

The tenants stated that they felt they had a very good relationship with the landlord at the start of the tenancy but that when it became apparent that their schedule would prevent them from property and horse sitting for the landlord, which they had agreed to in order to enter into the tenancy, the relationship became very difficult for both parties. The tenants contend that it was never their intent to mislead the landlord regarding their availability for property and horse sitting or in regards to the home based business.

### Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord is entitled to a monetary order in the amount of \$109.20 for cleaning costs as the tenants admit that they 'may have' tracked in wet and snow during the move-out and were vague as to whether or not they went back in and cleaned the floors.

I accept the landlord's testimony regarding the gate being broken by the tenant as the tenant was the only party that entered or left the property between the time the gate was in good working order the night before to when it was broken the next morning. However as the weather may have played a part in the operation of the gate, the landlord is entitled to compensation in the limited amount of \$300.00 for repair of the gate.

Section 72 of the Act addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord's claim for \$280.00 in legal costs is hereby dismissed.

In regards to the landlord's request for compensation due to the tenant's harassment and conducting a home based business on the property, Residential Tenancy Policy Guideline 6 states: *A landlord does not have a reciprocal right to quiet enjoyment.*, therefore the landlord may not claim against the tenant through this office. Accordingly, the landlord's claim for \$500.00 in damages for harassment by the tenants is hereby dismissed.

Based on the documentary evidence and testimony of the parties I find that the tenants are not entitled to compensation for renting a studio, an alternate residence, loss of students, loss or recording contract or loss to record a CD. The tenants testimony reflects that they were not forthcoming with the landlord regarding their availability to property and horse sit and the operation of the home based business directly led to the problems that arose between the parties. As the tenants were spending four days per week at another residence the tenants had a location from which they could operate their business, have lodging and a space for recording.

I am satisfied that the landlord did not actively seek out to disturb the tenant's peace and quiet enjoyment or interfere with the tenant's clients and that the tenant's purposely avoiding communicating with the landlord led to many of the problems that ensued. Accordingly, the tenant's claims for \$200.00 to rent a studio, \$100.00 for alternate housing, \$400.00 for loss of students, \$200.00 for loss of recording contract, \$1200.00 for loss to record a CD and \$1200.00 for stress and abuse are hereby dismissed.

In regards to the tenant's claim for return of double the security deposit, I find that the landlord acted in good faith when he considered the \$600.00 payment to *not* be a security deposit as he specifically did not request one from the tenants. The landlord does however have to return the \$600.00 to the tenants as Section 26 of the Act speaks to Rules about payment and non-payment of rent. Therefore if the rent was due at the beginning of each month the tenant's should have not been compelled to pay the last month's rent at the start of the tenancy and the tenants have paid all rent owing the landlord resulting in an overpayment of \$600.00.

*Section 26 (1) 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.*

I find that the tenant's are entitled to return of the \$600.00 that the landlord holds as the last month's rent and which the tenants consider a security deposit.

The landlord in this application is entitled to a total award of \$409.20 in cleaning costs and damage to the gate. The tenants in this application are entitled to a total award of \$600.00 being held by the landlord as the rent over-payment/security deposit. As these two amounts offset each other, the tenants will receive a monetary order for \$190.80

As both parties have had some success in their application, neither party is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the tenants are entitled to a monetary claim for **\$190.80**.

A monetary order in the amount of **\$190.80** has been issued to the tenants and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: April 7, 2010

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Residential Tenancy Branch