



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlords' application: MND; MNR; MNDC; MNSD; FF

Tenants' application: MNDC; MNSD; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Landlords seek a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Residential Tenancy Act (the "Act"); to apply the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The Tenants seeks compensation for damage or loss under the Act; for return of the security deposit; and to recover the cost of the filing fee from the Landlords.

This matter was set for Hearing on January 5, 2012, and adjourned to January 24, 2012 because there was insufficient time to hear all of the parties' submissions on January 5, 2012. In addition, the Landlords were given leave to provide the Tenants and the Residential Branch with a copy of a Condition Inspection Report, and to provide the Tenants with another set of photographs.

The parties gave affirmed testimony at the Hearings.

### **Issues to be Decided**

1. Have either party provided sufficient evidence to prove their claim for damage or loss under Section 67 of the Act?
2. Are the Landlords entitled to a Monetary Order for loss of revenue for the month of October, 2011?
3. Disposition of the security deposit.

### **Background and Evidence**

The parties agreed on the following facts:

- This tenancy started on April 1, 2010.

- The Tenants moved out of the rental unit on September 20, 2011, after the police were called.
- The Tenants did not provide the Landlords written notice to end the tenancy.
- Monthly rent was \$1,100.00.
- The Tenants paid a security deposit in the amount of \$550.00 on March 14, 2010.

The Landlords provided the following testimony:

The Landlords seek a monetary award, calculated as follows:

Materials and labour for repairs and cleaning the property at the end of the tenancy	\$3,379.35
SUBTOTAL	\$4,479.35
Less set off of security deposit	<u>-\$550.00</u>
TOTAL	\$3,929.35

The Landlords testified that they re-rented the rental unit effective November 1, 2011. They seek loss of revenue for the month of October, 2011, because the Tenants did not provide notice that they were ending the tenancy.

The Landlords provided photographs in support of their damage claim, which they testified were taken on September 21, 2011, after the Tenants moved out. The Landlords gave testimony with respect to each of the photographs and the damages depicted on the photographs. The Landlords provided invoices and receipts in support of their claim, and provided testimony with respect to each invoice and receipt.

The Landlords testified that they called the police on September 20, 2011, because the male Tenant threatened them with bodily harm.

The Landlords testified that the Tenants left behind a lot of junk that had to be disposed of and referred to the photographs in support of their claim for junk removal. They testified that the Tenants did not clean the rental unit at the end of the tenancy and referred to the photographs in support of their claim for the cost of cleaning the rental unit.

The Landlords testified that they performed a move-in Condition Inspection by themselves and gave the Tenants a copy. They stated that they attempted to do the inspection with the Tenants twice, but the Tenants would not cooperate. The Landlords testified that they also performed a move-out Condition Inspection by themselves and gave the Tenants a copy. They stated that they attempted to do the move-out

inspection with the Tenants twice, but the Tenants would not cooperate. A copy of the Condition Inspection Report was provided in evidence.

The Tenants provided the following testimony:

The Tenants agreed that they did not provide due notice to end the tenancy, but stated that they moved out because on September 9, 2011, the police advised them to do so. They testified that the police told them they should move for their own safety because the Landlords were threatening them with bodily harm.

The Tenants testified that they were not provided with a copy of the Condition Inspection Report until they received a copy in the Landlords' evidence package. The Tenants disputed the Landlords' allegation that they were given two opportunities to perform the inspections and refute the information contained on the Condition Inspection Report.

The Tenants testified that most of the items depicted in the photographs were left by the previous occupants and that some of the other items were theirs, but were thrown away or sold by the Landlords. The Tenants testified that they finished moving their possessions from the inside of the rental unit on September 28, 2011, and that they returned to the rental unit on September 29 to retrieve their remaining belongings that were outside the rental unit, but that the Landlords told them they had been sold. The Tenant's submitted that they had paid rent for the full month of September, 2011, and that they had a right to come back and remove their remaining belongings and clean the rental unit.

The Tenants questioned the validity of six of the invoices which were from the same contractor. The Tenants testified that the contractor was not a legitimate business and that another business was located at the address for the contractor noted on the invoices.

The Tenants testified that there was not much cleaning to be done and that they were unable to do any cleaning because the Landlords became verbally and physically abusive.

The Tenants refuted all of the Landlords' claim for damages to the rental unit, referring to each of the photographs contained in the Landlords' evidence package. The Tenants testified that they had ongoing problems with leaks and other issues during the tenancy but that when they told the Landlords about them, their response was, "it's your place – you repair it".

The Tenants also testified that one of the photographs was taken in May, 2011, and that some of the photographs could not have been taken at the end of the tenancy because of the items that are shown in the pictures.

The Tenants are claiming compensation for loss of their property that they allege was removed from the rental property by the Landlord prior to the end of September, 2011. The Tenants provided a monetary work sheet listing the property, at a total loss of \$3,450.00. The Tenants are also asking for return of the security deposit in the amount of \$550.00 for a total monetary claim of \$4,000.00.

The Landlords gave the following reply:

The Landlords denied threatening the Tenants and reiterated that it was the male Tenant who was threatening them with physical violence. They stated that when the Tenants moved out, they took the barbeque, some bins and some other items that were on the Tenant's damage claim. The Landlords denied selling any of the Tenant's belongings.

### **Analysis**

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. In this case, both parties are claiming damage or loss and therefore the onus is on each party to prove their own claim.

To prove a loss and have the respondent pay for the loss requires the applicant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 44 of the Act provides a list of the only ways a tenancy can end. I find that the Tenants did not comply with Section 44 of the Act when they ended the tenancy. I find that the Landlords suffered a loss as a result of the Tenants' failure to comply with Section 44 of the Act. The parties agreed that the monthly rent was \$1,100.00. I find that the Landlords did not have time to re-rent the rental unit for October 1, 2011, and

therefore I allow the Landlord's claim for loss of revenue for October, 2011, in the amount of \$1,100.00.

Section 38(6) of the Act requires a landlord to either return the tenant's security deposit or file an Application for Dispute Resolution against it, within the latter date of the day the tenancy ends or the day the landlord receives the tenant's forwarding address in writing. I find that the tenancy ended on September 29, 2011, and that the Landlords filed an Application against the security deposit within the time allowed by section 38(6) of the Act.

Further to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award for loss of revenue.

With respect to the remaining claims of the Landlords and the Tenants, I find that neither party has met the burden of proof. There was conflicting testimony on all points, and neither party provided independent evidence to support their claims. No independent witnesses were called to give verbal testimony at the Hearings. No written statements were provided from independent witness.

I do not accept the Landlords' Condition Inspection Report as evidence of the condition of the rental unit at the beginning or the end of the tenancy. I find it improbable that the Tenants would refuse to complete an inspection report with the Landlords at the beginning of the tenancy, as it would protect their interests with respect to future allegations of damages.

The Tenants provided a list of items for which they seek compensation, but no evidence of the stated worth of those items or independent proof that the items were removed by the Landlords.

For the reasons stated above, I dismiss the remainder of the Landlords' claim and I dismiss the Tenants' claim for damage or loss.

The security deposit has been extinguished pursuant to the provisions of Section 72 of the Act.

I hereby provide the Landlords a Monetary Order against the Tenants in the amount of \$550.00, representing the balance owing for loss of revenue for the month of October, 2011, after setting off the security deposit.

I order that both parties bear the cost of filing their applications.

**Conclusion**

The Tenants' application is **dismissed without leave to reapply**.

The Landlords' application for a monetary award for loss of revenue for the month of October, 2011, is granted. I order that the Landlords apply the security deposit towards their monetary award and provide them with a Monetary Order for service upon the Tenants for the balance, in the amount of **\$550.00**. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

The remainder of the Landlords' application is **dismissed without leave to reapply**.

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 31, 2012.

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Residential Tenancy Branch