



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

**File No: 766883**  
**Additional File(s):766872**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

**(AGENT),**

Applicant(s)/Respondent(s)

And

s.22

**Tenant(s),**

Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Chilliwack, BC

Date of Hearing: February 25, 2011, by conference call.

Date of Decision: February 25, 2011

Attending:

For the Landlord:

s.22

Landlord

For the Tenant:

No One

## **DECISION**

Dispute Codes      OPC FF  
                              O (CNC)

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for Cause and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed for other, however based on what they wrote in the details of dispute and considering they provided a copy of a 1 Month Notice to End Tenancy for Cause, I accept that they were applying to obtain an Order to cancel the Notice to End Tenancy.

The Landlord appeared at the teleconference hearing; however no one appeared on behalf of the Tenants despite them having their own application for dispute resolution being heard during the same hearing.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Is so, has the Landlord met the burden of proof to end this tenancy and obtain an Order of Possession.

### Background and Evidence

The parties entered into a written month to month tenancy agreement for this unit effective January 1, 2011. Rent is payable on the first of each month in the amount of \$850.00 and on January 3, 2011 the Tenant paid \$4725.00 as the security deposit.

The Landlord testified that on January 24, 2011 the Tenant was seen picking up cigarette butts from her landscaper/painter's rental unit. When the landscaper/painter

asked the Tenant to get off his property the Tenant assaulted the landscaper/painter by kicking him in the chest with cowboy boots and then he proceeded to repeatedly bang the landscaper/painter's head into the asphalt. The police were called and the Tenant was taken away and arrested.

The next morning, January 25, 2011, the Landlord personally served the Tenant with the 1 Month Notice to End Tenancy in the presence of two police officers.

The Landlord stated that she had made arrangements with the Tenant for a truck to attend the rental unit today at 3:00 p.m. to move him out today. The Landlord requested that an Order of Possession be issued to her effective February 28, 2011 in case the Tenant refuses to leave.

The Landlord questioned why the Tenant would be allowed to make application to cancel the Notice when he failed to file his application within the required time frames.

### Analysis

#### **Tenant's Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

Based on the above, I approve the Landlord's request for an Order of Possession effective February 28, 2011.

### **Landlord's Application**

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

That being said, I have already granted the Landlord an Order of Possession based on my dismissal of the Tenant's application, therefore no further action is required.

The Landlord has succeeded with her application; therefore I award recovery of the \$50.00 filing fee.

### Conclusion

A copy of the Landlord's decision will be accompanied by an Order of Possession effective **February 28, 2011 at 1:00 p.m.** after service of the Order on the Tenant. The Order must be served on the Tenants and is enforceable through the Supreme Court as an order of that Court.

The Landlord is at liberty to retain \$50.00 from the Tenants' security deposit as full recovery of the filing fee awarded above.

The Tenant's application is HEREBY 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: February 25, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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If you do, visit the RTB website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: Enforcing a Monetary Order
- How and when to have a decision or order clarified or corrected:  
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
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- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)





# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 770356**  
**Additional File(s):763987**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**, Tenant(s),**  
Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Bowen Island, BC

Date of Hearing: March 14, 2011, April 11, 2011, June 9, 2011, by conference call.

Date of Decision: July 08, 2011

Attending:

For the Landlord:

s.22

Landlord  
andlord

On June 9, 2011  
for the Landlords

s.22

attended as Legal Advocate

For the Tenant:

s.22

s.22

Tenant  
, Occupant  
Advocate for the Tenants

## **DECISION**

**Dispute Codes**      O MNSD MNDC MND FF  
                                 MNR MNDC MNSD FF

### **Preliminary Issues**

Each person who attended the dispute resolution teleconference hearing and subsequent reconvened hearings were given an opportunity to present their arguments and/or testimony with the exception of the Tenants' witness who appeared at the teleconference hearing on March 14, 2011.

After careful consideration of the volume of evidence before me and the amount of testimony that was anticipated for both applications I ordered all witness testimony to be submitted and received by me and the opposing party, in writing, no later than March 25, 2011, pursuant to Rules 11.11, 3.1, 4.1, and 8.5 of the *Residential Tenancy Branch Rules of Procedure*.

I note that the male person named as the applicant in the claim filed against the Tenants and who is named as one of the respondent Landlords in the Tenants' application for dispute resolution is not named as a landlord in the written fixed term tenancy agreement. The female who is named as the Landlord on the fixed term tenancy agreement and as a respondent Landlord on the Tenant's application for dispute resolution is not named in the Landlord's application for dispute resolution as a Landlord. The male testified that both he and his wife are owners of the rental property. Both the male and female listed as Landlords in attendance for this dispute were in attendance at the teleconference hearing and each subsequent reconvened hearing.

**As per Section 1 of the Act a "landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Applying the above definition, I find that the two Owners are proper parties to this proceeding. Therefore I amended the style of cause for these applications to include both the male and female Landlords' name pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

The person who attended with the Tenant and is named as an Occupant in attendance for this dispute is the Tenant's s.22 who lived at the rental property with the Tenant for the duration of this tenancy. It is not uncommon for adult children to reside with their parents and not be listed as a tenant as the parent is paying the rent. That being said and pursuant to section 8.3 of the *Residential Tenancy Branch Rules of Procedure*, I allowed the Occupant to attend the hearings and provide testimony as s.22 resided at the rental unit for the duration of the tenancy, assisted s.22 in putting their evidence together, and was attending as support for s.22 the Tenant.

### Introduction

This dispute dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants and were heard by teleconference hearing on March 14, 2011 for one hour, and reconvened on April 11, 2011 for three hours and ten minutes, and June 9, 2011 for three hours and five minutes.

The Landlords filed seeking a Monetary Order for damage to the unit site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and security deposit, to recover the cost of the filing fee from the Tenants for this application, and for other reasons which they described in the details of their dispute on the application as "respondents damaged the residence making it unable to rent for 3 months in addition to cost of damages – respondents did not fulfill their obligations in regarding maintenance as per lease agreement [sic].

The Tenants filed seeking a Monetary Order for the cost of emergency repairs, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, return of double their pet and security deposit, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of hearing documents and the volumes of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Landlords appeared at the first two hearings without the assistance of a legal advocate (Landlord's Advocate) who attended the June 9, 2011 hearing. At the outset of the June 9, 2011 reconvened hearing the Landlords' Advocate introduced herself.

After stating her name she said s.22 I am here as the Landlords' advocate. s.22

s.22 and I would like to know what Rule of Procedure you used to state no additional evidence would be accepted?"

I informed the Landlord's Advocate that I would not use valuable hearing time to argue my interpretation of the *Residential Tenancy Act*, Regulation, Rules of Procedure, or any other law with her. I explained that she was at liberty to ask me questions which I would document and respond to in my written decision. I note that no further questions were put forward by the Landlords' Advocate and the answer to her question about evidence is listed below in my analysis.

#### Issue(s) to be Decided

1. Have the Tenants met the burden of proof to be entitled to reimbursement of the cost of emergency repairs they had completed to the rental property?
2. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, have the Tenants met the burden of proof to be awarded monetary compensation as a result of that breach?
4. Have the Tenants met the burden of proof to be awarded the return of double their security deposit?
5. Have the Landlords met the requirements of the *Residential Tenancy Act* to be entitled to keep the security and pet deposits?
6. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

7. If so, have the Landlords met the burden of proof to be awarded monetary compensation as a result of that breach?

### Background and Evidence

The *Residential Tenancy Branch Rules of Procedure # 11.2* provides that a party must present only evidence that is relevant to the application being heard. Over the course of the seven hours and 15 minutes of the teleconference hearing volumes of evidence was presented, some of which was not relevant. Following is a summary of the relevant evidence.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement which began October 15, 2008 and ended September 30, 2010. Rent was payable on the first of each month in the amount of \$3,200.00. On August 5, 2008 the Tenants paid \$1,600.00 as the security deposit and \$1,600.00 as the pet deposit.

The Landlords testified they were not able to open the DVD of photos provided by the Tenants as evidence. Then they advised that their application and monetary amounts claimed are estimates based on their educated guess.

Due to the volume of relevant information provided in the testimony I have chosen to list the information in point form under each main category of compensation being claimed as follows:

### **Tenants' Claim**

#### **1) \$6,400.00 Return of Double the Security and Pet Deposits**

- On September 27, 2010 a registered letter was sent to the Landlords with the Tenants' forwarding address, requesting a move out inspection, and a request for the return of their security and pet deposits
- As of the hearing, March 14, 2011 the deposits have not been returned to the Tenants
- The Tenants attended the move out walk through however the Landlords never completed a formal report and nothing was signed
- The Tenants stated they left the rental property in clean, undamaged condition.
- Two witnesses attended on October 1, 2010 at 2:00 p.m. and provided written statements as to the condition of the rental property, provided in the Tenants' evidence
- They provided numerous photos in their evidence which support the condition of the unit

- The Landlords did not file a claim to keep the security and pet deposits until more than three months after the Tenants filed their claim for dispute resolution
- The Landlords provided a walk through orientation however no walk through inspection was completed and no forms were completed at the beginning or the end of the tenancy

**2) \$1,307.00 Emergency Repairs**

- The Tenants stated they were led to believe that inside the envelope marked “emergency preparedness” that there would be emergency contact numbers inside, there were not
- The Landlords left to go out of the country November 27, 2008. The female Landlord returned in May 2009 and the male Landlord returned August or September 2009.

- There was no Landlord or emergency contact around to make the decisions

- **2(A)\$84.00 Hot Water Tank**

- They had no hot water as of December 13, 2008; they had problems locating the hot water tank when they later found out that it was outside.
- They called a plumber and were told the hot water tank needed to be insulated and it cost \$84.00. This was no fault of theirs as the hot water tank was outside and it was a cold winter

- **2(B)\$978.00 Water Pump**

- When they had no hot water on December 13, 2008 they noticed a leak in the water pump and asked the plumber to check it out.
- The plumber also found a leak coming from the bath tub.
- They were instructed by the Landlord during their orientation to watch the water pump to make sure there were no water leaks
- The plumber advised the water pump was going to break down, they told the male Landlord who said the plumber was wrong and told them to tighten up the connections and to keep it warm
- January 27, 2009 the water pump seized. There was no communication with the Landlord at this time as they could not reach him on Skype so they had no water for 4 or 5 days
- The plumber told them the water pump could not be fixed so they paid to have a new water pump purchased and installed
- It was not until after the new pump was installed that the male Landlord claimed there was warranty on the old water pump
- They gave copies of the invoices for \$84.00 and \$978.00 from the plumber to the female Landlord in May 2009 when she returned to the country and did an inspection. It was during this inspection that they showed her the water leak in the outside garden hose and there was no response

- **2(C)\$245.00 Sewage pumped and Repaired**

- The sewage pump issue began in August 2009 when the sewage backed up into the downstairs bathtub and toilets
- They were told by the male Landlord at the outset that the septic tank was pumped out just before they were beginning their tenancy
- A snake was used as they thought it was simply plugged
- They ended up having to hire a plumber who determined that the main sewage pipe that ran from the house to the tank, up to about thirty feet, burst because the solids from the tank were backing up towards the house
- On August 26, 2009 they paid \$245.70 to have the pipe fixed
- The male Landlord returned to the country and they discuss all of these issues. The Tenants request that the Landlords pump out the septic tank. The male Landlord tells the Tenants to have it pumped out and they will pay them for it. The tank was pumped September 3, 2009 for a cost of \$438.37 and the Landlord did reimburse them.
- They were only in the house for eight months at the time the tank was first pumped yet as per their evidence the tank had not been pumped in years. They were told by the plumber that this is the worst issue he had ever seen and that pumping out the tank was only a temporary fix. The plumber stated that the field and tank had been neglected for years, as supported by the plumber's letter provided in tab 5 of the Tenants' evidence.
- The Tenants stated they were left with having to deal with this septic issue which involved cleaning up a lot of mess and the inconvenience of arranging to have the work completed.
- They were tired of not getting a response to their requests for reimbursement from the Landlords so they sent a firm email in December 2009 requesting the payment

**3) \$10,300.00 for Damage or Loss**

**3(A) \$500.00 for Loss of Internet and Television Service**

- They had a verbal discussion with the Landlord at the outset of the tenancy where they explained that internet service was mandatory
- Their evidence included a copy of the advertisement placed by the Landlord to rent the property which is located after tab 9. The advertisement lists telephone, internet , and television
- They were told by the Landlords the name of the service provider so they signed up with them for one year. The service was great for six months and then it became intermittent and riddled with problems.
- They had the service provider come out and inspect the property and they were told that the cable was not hooked up properly and it was an exposed line which is negatively affected by the winter weather
- They kept telling the male Landlord of the problems but he just never said a word

- Had they known of the problems with the service at the outset they would have had satellite from the beginning.
- There were satellite dishes at the property but the Landlords did not offer them for their use
- The Tenants spent over \$1,000.00 to have a new satellite dish hooked up with a different service provider
- The service provider owns the dish so when they moved out it was left at the rental unit

**3(B) \$2,880.00 for Unpotable Water from December 2009 to April 2010**

- During Christmas 2009 the water began to smell murky like lagoon or pond water and it appeared to have dirt in it
- The water stopped completely and then came back on again
- They had to boil their drinking water and did laundry and took showers elsewhere
- They e-mailed the Landlords to ask what was going on and if this water was safe
- The Landlord responded and never told the Tenants that the well had broken down and he had switched over to a pond with fish in it to provide their water
- The male Landlord was at the property often during this period to adjust the water pump and put filters on to accommodate the pond water. Then the pump got sluggish and stopped all together.
- When they complained to the Landlord he told them to buy themselves better filters at which time he told them it would be fixed in a few weeks
- The Tenants said this situation was a nightmare as they had arguments with the Landlords verbally and via emails about how their contract provides for potable water.
- The copy of the e-mail between them and the Landlord which is located on page 56 of their evidence supports that they were not informed of the well breaking in December 2009 until March 27, 2010. The well was not repaired and up and running again until early April 2010.
- The male Landlord was constantly on the property so we kept thinking he would fix it and before we knew it 4 ½ months had gone by.
- They had contacted the *Residential Tenancy Branch* and were told to work through this with the Landlord in a methodical way and make a claim later; which is what they did
- They continued to buy bottled water and went to family and friends to do laundry and shower

**3(C) \$6,920.00 for Loss of Quiet Enjoyment**

- 3(C)(i) \$200.00 for Move in Date delayed
- Their tenancy agreement was to begin October 15, 2008 and they had arranged movers for that date

- The date was delayed until October 17, 2008 by the Landlords and when they arrived the Landlords still had many of their possessions inside the house
- They are seeking \$100.00 for their inconvenience for each day they were delayed
- 3(C)(ii) **\$3,200.00** Loss of Privacy due to Landlords Attendance at Property
- They are seeking the return of rent from October 17 to November 28, 2008 as the Landlords left furniture and their bird in a bird cage inside the house
- The male Landlord continued to enter the house without their permission or prior notice
- The Landlords left boxes of possessions outside
- The Landlords were building a storage building on the property which provided a constant echo of saws, hammering, talking, and cars driving by
- The Landlords blocked their driveway with equipment and would drive his ATV up to the house to pick up tools
- On two separate occasions the male Landlord entered the house, without notice, and startled the Occupant, who at one time was in her night clothes
- The Occupant stated the male Landlord told her she would have to bear with it until they were gone out of the country
- The male Landlord would also show up to fix things around the property without notice and would show up intermittently as it fit into his schedule
- 3(C)(iii) **\$3,520.00** Reduced Rent
- They are seeking reduced rent equal to 5% (\$160.00 for each of the 22 months of their tenancy) for the following:
- Having to deal with equipment constantly breaking that was due to no fault of their own
- Being told mistruths that everything was new and in pristine condition
- The solar panels on the roof never worked
- The roof leaked and they had problems with the water, septic, and internet
- They provided copies of the Landlords' new advertisement where they are saying everything is all good again
- They ended up feeling insecure as their patience ran out
- They felt the male Landlord's attitude towards them was a problem as he ignored them, called them whiners, told them this is country life, and he questioned why they could not handle it
- They paid their rent and did not get their quiet enjoyment when the Landlord returned after 9 months of being out of the country as he caused unreasonable disturbances, he was always around, he would open doors without knocking and no notice was provided when he would be there
- He would tell them he was coming to his storage shed or the circle but 15 minutes later he would be at the front door and would open the door or look

inside the house through the windows. The front of the house is all windows so he could see everything inside

- There was no reason for him to be at the door and his appearances were random which caused a constant low grade nervousness
- Often he would not come to the property on the day he listed in his e-mails and then would just show up some other day unannounced
- When the Landlords would not leave or be restricted from entering all "hell would break loose" because they would become offended
- If they asked nicely for advance notice the Landlord would send e-mails stating things like "you want to play by the book" which indicates to them that the Landlords were offended.
- The Landlords would later become confrontational with them.

The Landlords provided the following response to the Tenants' submission during the April 11, 2011 hearing:

**1) \$6,400.00 Double the Return of Security and Pet Deposits**

- The Landlords confirmed they do not have an Order from the Residential Tenancy Branch authorizing them to keep the security deposit
- The Landlords do not have the Tenants' written permission to keep the security deposit
- They made no applications for dispute resolution to keep the security and pet deposits until they filed their application on February 25, 2011.
- There were a few attempts to conduct a move out inspection as supported by the copies of emails provided on pages 57 and 58 of their evidence. The Landlords attended October 1, 2010 and left because the rental property was not cleaned up. They attended again on October 2, 2010.
- No final notice of inspection was issued and no move out inspection report was completed or signed by both parties.
- Rent was paid in full up to September 30, 2010.
- The Landlords state the Tenants refused to attend the move out inspection as supported by the e-mail found in their evidence after tab 11 page 58

**2) \$1,307.00 Emergency Repairs**

- **2(A)\$84.00 Hot Water Tank**
- They provided the Tenants with an orientation of the property at the outset of the tenancy at which time they told the Tenants verbally that they need to install a cable to the hot water tank before the winter arrived
- The instructions how to install the hot water tank cable were provided verbally and no written instructions or notes were provided to the Tenants

- The male Landlord referenced an e-mail provided in the Tenants' evidence on page 45 where he indicates that he needed to install the cable
- He questions the evidence provided by the plumber as the hot water tank did not freeze it was the water line that froze
- He referred to his evidence which displays that the outside temperature went below freezing (tab 4 pages 21 & 22)
- This hot water tank has no tank so the plumber's evidence is wrong
- The Landlords stated they are faced with having to defend themselves to items the Tenants never requested before as noted in the email they provided in their evidence (tab 4 page 29)
- They contend that all of the Tenants' emails were answered and they were never presented with a bill until they made this claim. They never have received a copy of the \$84.00 bill only a copy of a cheque
- **2(B)\$978.00 Water Pump**
- The Tenants said their plumber said the water pump froze however the pump is located inside the laundry room that has a heater, so if it froze it was due to the Tenants' negligence
- Their water pump was not an old pump; it was recently new, about two years old.
- The Landlords did not provide evidence as to the age of the water pump and never thought to bother looking for it
- The Landlords are of the opinion that the water pump broke because it froze
- They argued that they never saw the broken pump, they never saw an invoice, the Tenants never asked to be reimbursed until now, they never brought the issue up with the Landlords prior to making their application for dispute resolution.
- The Landlords confirmed they saw the new water pump during one of their inspections of the property but never questioned the Tenants about it
- The Landlords stated they did not remember how they heard about the problems with the water pump
- The Landlords stated they were not given an opportunity to participate in the repair and they suggest that it broke on the same day as the hot water tank
- **2(C)\$245.00 Sewage pump**
- The Landlords advised the septic tank backed up on August 29, 2009 and the only bill that was presented to the Landlords was for the pumping out of the tank which they reimbursed the Tenants for.
- The Landlords claim the problems were caused by the Tenants putting improper products into the septic as they had had it pumped out prior to the tenancy
- The Landlords advised they do not have proof that the septic was pumped out prior to the tenancy

- The Landlords stated they were not given notice that the sewage pipe was broken and the first time they saw the bill for this repair was two years later

**3) \$10,300.00 for Damage or Loss**

**3(A) \$500.00 for Loss of Internet and Television Service**

- The Tenants never contacted the Landlords about their decision to have satellite installed
- The Landlords stated this information was all new to them when they read the Tenants claim
- Their internet provider served them for over 15 years and their next door neighbour said they have never had any problems
- They reference an e-mail they provided in evidence (tab 7) where the male Landlord wrote to the Tenants how their service has been fine for over 20 years and now their service provider has stopped providing them with service.
- There were two existing satellite dishes that were previously installed at the house that the Tenants disconnected and left all the wires and dishes behind

**3(B) \$2,880.00 for Unpottable Water from December 2009 to April 2010**

- The male Landlord confirmed the water smelled like chlorine because he was treating the pond water with bleach
- This pond water is fed into a holding tank by gravity
- The Landlords stated there was an underground water line that fills the water holding tank, by gravity, and then an automatic valve to keep the tank full
- The pond feeds into the tank in an emergency or if switched manually
- The Landlords confirmed their well is shared with the neighbouring property and that the deep well pump was only four years old. They did not provide evidence as to the age of this well pump
- The Landlords received an email from their neighbour advising of a problem with the well pump and states that there was an 8ft water spray coming from the Tenants' outside hose
- The Landlord referenced an email dated May 3, 2009 at tab 9 in his evidence where the neighbour informs the Landlords of the water spraying from the Tenants' hose; the Tenants told him the water spray was fixed
- They had previously instructed the Tenants to keep the outside hose closed however the plumber opened the hose which caused a huge leak which the Landlords state was the cause the deep well pump broke
- The Landlords stated the Tenants allowed this water to continue to leak from May 3, 2009 to January 2010 which caused their deep well to burn out
- The Landlords confirmed they did not know if the Tenants used this hose intermittently or not and they did not supply documentary evidence to prove what caused the water pump to burn out
- The male Landlord advised that he does most of the repair work himself

- The Landlords did not provide the Tenants with notice that they were changing the water supply from well water over to pond water
- The male Landlord told the male Tenant in January of a problem with the well however there was never a loss of water to the house
- The Landlord claims it was a process of elimination to determine the problem with the well. He saw the water pump did not have enough pressure to fill the tank; he waited for parts and good weather to be able to install the new pump
- The Landlord confirmed his neighbour paid 50% of the cost of the repair
- The Landlords kept providing water even though it was pond water
- He agreed the water was brown with the rain and run off however he chlorinated the water with bleach after he tested it and measured the required amount of bleach required.

**3(C) \$6,920.00 for Loss of Quiet Enjoyment**

- 3(C)(i) \$200.00 for Move in Date delayed
- The Landlords confirmed they were late in moving out of the house
- They contend they were out by October 16, 2008 and not October 17, 2008 as claimed by the Tenants
- The Tenants were not given the keys to move into the rental unit until October 16, 2008 even though the contract says start of the tenancy was October 15, 2008
- The Landlords stated they spent October 17, 2008 in a hotel but did not provide evidence to support this
- The Landlords confirmed they still had possessions inside and outside the rental unit and originally the Landlords property was to be stored in one side of the carport. they later verbally agreed to allow the Tenants to have both sides of the carport
- They stated the Tenants initially requested to keep some of the Landlords' furniture and the Landlords' bird inside the house and later changed their mind so the Landlords removed those items
- They worked through things as a trade off
- 3(C)(ii) \$3,200.00 Loss of Privacy due to Landlords Attendance at Property
- The Landlords pointed out section 3(b) of their lease which is found after tab 2 page 14 of their evidence which states that the Tenants have non-exclusive use of the property
- 3(C)(iii) \$3,520.00 Reduced Rent
- First the Tenants say we are not accessible so they have to do the repairs and then they say we are there all of the time never giving them their privacy
- The male Landlord said the Tenants' testimony is all false
- He confirms he was building a storage shed and working on the shed roof 700 feet away from the house but he never disturbed them

- The Landlord referenced an e-mail dated June 17, 2009, (tab 8 of their evidence) where the Tenants wrote them to advise everything was working great and they had no problems
- They did not constantly inspect the house and only did one house inspection as supported by the e-mail provided in their evidence after tab 8 on page 38

At this point the hearing time allotted for this reconvened hearing (April 11, 2011) was about to expire. I instructed all parties that we would reconvene for one final hearing and they would be notified in writing of the final reconvened hearing date and time. The parties were advised that no additional evidence would be accepted by either party and we would begin the next hearing with the Landlords presenting the merits of their application followed by the Tenants' response and closing remarks.

At the outset of the June 9, 2011 hearing I explained I would not be accepting the additional evidence provided by the Landlords as I had previously instructed all parties not to send additional evidence. The Landlords responded by claiming I did not allow the female Landlord an opportunity in the previous hearing to provide testimony in response to the Tenants' claim. The Landlords stated they felt I was not able to understand the male Landlord through his accent. I reminded the Landlords how I encouraged the female Landlord to provide testimony during the April 11, 2011 reconvened hearing and I repeated several pieces of testimony provided by the female Landlord. I also pointed out I had no problems understanding the male Landlord. The Landlords acknowledged this and apologized.

I then turned the floor over to the Landlords to begin presenting their submission at which time the female Landlord proceeded to read an eleven page submission which was created after the April 11, 2011 reconvened hearing and was a reconstruction of their response to the Tenants' claim that they had provided in the April 11, 2011 reconvened hearing.

The Floor was then turned to the Tenants for their response. The Tenants' Advocate submitted the following:

- He agreed that the law of equity should be applied if possible for residential tenancy matters
- His reading of the law is that the Dispute Resolution Officer does not have discretion to refuse payment of double the security and pet deposits as it states double payment "must" be made
- He is of the opinion that a Dispute Resolution Officer has the ability to refuse evidence based on their discretion

- The Tenants made requests and attempts to have their deposits returned, they did not walk away from their deposits as alleged in the Landlord's reconstructed submission
- It is the Tenants' right to apply for these claims
- Exceptional circumstances as quoted in the Landlords' reconstructed submission do not apply here, the Landlords simply made no effort to apply to keep the deposits
- The references to claims made for damages should be ignored as the Landlords' extinguished their rights to claim against the deposits when they failed to conduct a move in inspection and complete the report
- He agrees that the Landlords may be able to claim for cleaning
- In response to the e-mail the Landlords' provided in evidence at page 58 relates to a contentious issue at the time of move out yet they have phrased it in a neutral manner. The first line is very clear when they write "in all honesty". He contends this could not be clearer going into a conflict. There was no conciliatory note to it and the Landlords sounded very threatening. The Tenants did not want to respond to this so they gave the Landlords time to respond and return their deposits.

The Occupant testified and questioned the Landlords' claim of extraordinary circumstances. The Tenants sent their registered letter requesting their deposits. The Landlords sent them a report October 8, 2010 listing damages of \$6,821.60 and then the Landlords wait until February 25, 2011 to make their application, more than 3 months after the Tenants file their application on November 8, 2010. She wondered how the Landlords' delay would be extraordinary circumstances.

The Landlords' Advocate submitted that the *Kikals* decision is clear with respect to doubling deposits and that it is not the amount of time that is at issue. She continued by arguing that the Landlords were estopped by the Tenants when the Tenants failed to respond to the Landlords' report.

### **Landlords' Claim**

The Landlords referenced a two page spreadsheet titled "summary of damage from tenancy" which they provided in their original evidence at tab 13 and totals \$23,447.35 for their claim. This spreadsheet was referenced during the Landlords' testimony while presenting the merits of their claim.

- The Landlords read sections 32(2) and 32(4) of the *Act*, and from Policy Guideline #1.

- They confirmed their claim represents estimated costs and that the actual costs are above what they have claimed.
- They stated that at the onset of the tenancy the house was newly painted and the floors were freshly varnished, they did not provide evidence to support this work was completed.
- They had a new hot water heater installed prior to the tenancy

### **Landscaping**

- They had beautiful flower beds, lawn and patio
- They had realtors attend in August 2008 as supported by the email they provided in evidence at tab 11 page 53 and a letter at tab 11 pages 64-65
- A copy of the property appraisal is provided at tab 11 pages 48-52
- They state the Tenants agreed to pay their rent one year in advance because the property was in good condition
- The Tenants assured the Landlords they would take care of keeping the lawns and gardens maintained however they were not maintaining the grass and did not attend to the flower planters or flower beds that were near the house
- At the end of the tenancy the Landlords stated they found the planters were all emptied into the flower beds overtop of ashes from the fireplace
- All of the perennial plants were gone and they should have lasted about ten years
- A landscape quote was provided at tab 21 pages 189-190 in the evidence provided after the April 11, 2011 reconvened hearing (referred to as "late evidence" for the remainder of this decision).
- The Landlord had claimed \$179.20 to refill and replant the half barrels.
- Item #'s 37, 58, 59
- **\$1,139.20** for their claim as listed above for landscaping

### **Cleaning**

- Landlords seek \$25.00 per hour plus HST as quoted
- They claim the inside of the house required extensive cleaning at the end of the tenancy
- The shower stall door required extra cleaning with a corrosive cleaner to be able to remove the scum. Photos were provided after tab 16 pages 110- 125 and tab 17 page 174.
- Receipts were provided in the late evidence after tab 21 in support of the costs for cleaning supplies, kitchen cleaning \$42.00, shower door cleaning \$28.00, white sofa, \$150.00, clean up after mice droppings \$56.00, mice traps, clean out the gutters, pressure wash the outside of the house, and overall house cleaning of 40 hours.
- Item #'s 1, 12, 27, 29, 30, 36, 42, 52, 53
- **\$1,761.42** for their claim as listed above for cleaning

### **Carpets**

- The Landlords claim they had to replace the carpets because the Tenants' dogs soiled them repeatedly
- They know the dogs soiled repeatedly because they saw stains on the underlay and the wooden subfloor when they removed the carpets
- The carpets were 7 years old and there were 5.70 square feet for at total of \$1,995.00. After considering the depreciated value they are seeking partial payment
- A receipt was provided in the late evidence after tab 21
- **\$980.00** for their claim as listed above for carpets (item 32)

### **Wood Floors and Stairs**

- The floors on the main level had to be refinished and were only 10 years old
- The upstairs floors were spot refinished and were new
- The damage is referenced in their photos found after tab 13 and claimed at items #10, 17, 26
- The wood floor refinishing was completed by the Landlords at the end of October 2010 so there are no receipts to provide
- **\$836.00** for their claim as listed above for wood floors and stairs

### **Wall repairs and plastering**

- Photos are provided in their evidence after tab 17 page 146 to show the size of the holes in the walls
- A list of hours worked by the male Landlord in October 2010 is provided after tab 13 page 75
- The receipt was for \$642.00 however they claimed \$184.80 for the downstairs bedroom and \$350.00 for around the house
- Item # 49 and 34,
- **\$534.80** for their claim as listed above for wall repairs and plastering

### **Painting**

- The Landlords testified they had painted the house two years earlier in 2008
- Their actual cost to have the house repainted is \$556.82 as every room in the entire house needed wall repairs or work (item 48)
- **\$300.00** for their claim as listed above for painting

### **Appliances**

- A new fridge and range were purchased
- The oven door was broken
- The hood fan over the stove and oven had grease and grime
- They calculated that there was 3 years remaining in the useful life of their appliances so they claimed the 20% depreciated value of \$250.00
- The fridge bins and brackets were broken and the Tenants used screws to drill into the inside wall of the fridge

- The bins were 7 years old. 53% of the new fridge cost of \$424.00 however they only claimed the cost for the inside parts of \$169.12.
- **\$419.12** for their claim as listed above for the appliances (Item 22, 46)

#### **Missing Items and Supplies**

- There were several possessions left inside the house by the Landlords during the tenancy that were missing after the Tenants vacated the property
- The Landlords did not have an inventory list that was approved by the Tenants at the beginning of the tenancy however some of the items being claimed are seen in photographs provided in their evidence.
- The missing items being claimed under this category are listed as item numbers 45, 47, 2, 3, 4, 5, 11, 20, 21, and 19 on the "summary of damages from tenancy" document.
- The Landlords stated they could not replace most of these items as many were unique. Of the items listed above numbers 4, 11, 19, 20, and 21 were replaced.
- **\$429.76** for their claim as listed above for the missing items and supplies

#### **Retile around Downstairs Bath Tub**

- The Landlords' evidence at tab 17, pages 135-138 and at tab 21 page 203 references their claim listed as item # 18 on their summary of damages document and displays the broken tiles around the bathtub
- Their receipt at tab 21 shows an amount of \$1,535.00
- **\$448.00** for their claim as listed above for the bath tub tile repairs

#### **Repairs to Threshold, Doors, and Desk Top, Front Gate Post**

- The Landlords are seeking \$336.00 for the Desk (item 33); \$56.00 for the front door threshold (item 28); and bathroom door repairs \$112.00 (item 14); front gate \$28.00 (item 35)
- **\$532.00** for their claim as listed above for repairs

#### **Repairs to Broken or Damaged Items**

- The Landlords' photos provided at tab 17 pages 126-130; 139; 144-146; and 149 represent some of the items being claimed.
- The amounts and item numbers for this section are as follows:  
#6 - \$39.00; #7-\$28.00; #8-\$112.00; #9-\$75.00; #13-\$60.00; #15 - \$55.98; #16-\$84.00; #23-\$112.00; #24-\$112.00; #25-\$112.00; #31-\$11.20; #43-\$25.00
- **\$826.18** for their claim as listed above for the repairs to broken or damaged items

#### **Septic Tank Repairs**

- The Landlords stated it was the Tenants who caused the septic system to back up and not the field
- The Landlord had the distribution box excavated as supported by their evidence at tab 13 pages 74 and 77
- Both contractors noted that paper was in the septic which was corrugated

- The Tenant was informed about this and denied putting this in the septic so the Landlords gave them the benefit of the doubt
- The items relating to this claim on the Landlords' spreadsheet are numbers 50, 38, 39, and 40
- **\$1,300.30** for their claim as listed above for the septic tank repairs

#### **Well Pump Replacement**

- The Landlords stated this pump was only two years old when it burnt out and the normal life is 10 years
- They believe the pump burnt out due to the Tenants' negligence of allowing a water leak from the outside hose pipe that was spraying up to 7' high
- The Landlords provided evidence at tab 13 pages 83 to 96 of receipts for the cost to replace the pump
- This is claimed at item number 51 on their list at \$2,374.57
- The Landlords advised their costs were much greater because they made improvements during the replacement
- **\$2,374.57** for their claim as listed above for the well pump replacement

#### **Machine Work**

- The Landlords state the Tenants dumped piles of dirt on the gravel driveway to create a garden
- It will take a machine about one hour to remove this dirt
- The Landlords confirmed this work has not been completed and it is an estimated cost listed at item # 41
- **\$112.00** for their claim as listed above for the machine work

#### **Cable and Satellite Dishes**

- The Landlords advised that there was fully functioning cable at the outset of the tenancy
- The Tenants did not have the Landlords' permission to remove the existing satellite dishes and wiring
- When the Tenants' new satellite dishes were installed there was no sealing done to where screws were drilled into the exterior of the house
- The Tenants had a dispute with the Landlords' service provider and now this service provider is no longer willing to provide service to the Landlords
- The Landlords allege the Tenants failed to pay the bill to the Tenants' new service provider and the Landlords are now allegedly being refused service from this new service provider
- The Landlords' claim is located at item #44 and is for resetting and rewiring for the pre-existing satellite dishes
- **\$200.00** for their claim as listed above for the appliances

#### **Fees for Filing their Application and Service of Documents**

- The Landlords seek costs for filing fees, service of documents, developing of photos and copying
- **\$300.00** for their claim as listed above for fees

**Loss of Rent**

- The Landlords are claiming two months loss of rent (2 x \$3,800.00) at item # 57
- The Landlord provided evidence at tab 13 page 97 to support the rental unit was not re-rented immediately following the Tenants end of tenancy
- **\$7,600.00** for their claim as listed above for the appliances

**Travel Costs**

- The Landlords did not reside on the island where their property was located and are seeking travel costs and time to attend the rental unit
- These amounts are claimed at item numbers 54 - \$600.00; 55 - \$ 354.00; and 56 - \$2,400.00
- **\$3,354.00** for their claim as listed above for travel costs

The Tenants' and their Advocate's response to the Landlords' claim is as follows:

- The Advocate stated the Landlords admitted in their own materials that claims for damages are extinguished if no move in or move out inspection reports are completed
- The Landlords did not provide receipts for a majority of the items being claimed
- It is up to the applicant to prove there has been a loss suffered and without receipts they cannot prove this
- How can they come up with \$1,803.42 for cleaning supplies alone which makes us question how they determined these amounts
- There is no evidence of when this alleged work was done and it is critical for the applicant to prove their claim and that they have actually suffered a loss
- The Landlords used speculative dates so this weakens their evidence
- The time to claim to retain a security deposit is 15 days
- The Landlords did not conduct a proper move in or move out inspection
- There are no exceptional circumstances here
- They believe the Landlord is only entitled to make claims for cleaning here and not for damages
- The Tenants stated they outlined as much as they could and they believe their evidence gives all the information needed to know their rebuttal as provided in their evidence
- They note that there may be a possible misunderstanding in their phrasing of "holidays" of when the Landlords left the country
- The Landlords never left a contact number for when they were out of the country
- No information for a local contact was provided to the Tenants for the period the Landlords were out of the country

- They would just email the address listed on their tenancy agreement to contact the Landlords, no phone number was ever provided
- The emergency preparedness envelope did not contain emergency contact numbers or names
- The Tenants stated they would not have dealt with the emergency issues had the Landlord arranged to have a representative there for them to contact while the Landlords were out of the country
- When the Landlords called the Tenants it would never show a number on their call display. It would always show unlisted or redirected numbers
- The telephone number listed on their application for dispute resolution for the Landlords is a very recent number that they only obtained since the Landlords returned to the country.
- The Landlords are claiming their unfinished repairs as damages such as the work around the bath tub
- They have no knowledge of the alleged missing items; there were no mutually agreed upon lists created of items left in and around the house by the Landlords, there was no move inspection either... the Tenants had created a list which is listed at tab 11 page 6 of their evidence
- The Landlords' photos are zoomed in and do not fairly represent the items
- The Tenants deny that their dogs chewed the Landlords' desk
- It is disturbing that the Landlord provided a photo of a hole in the wall where their "bull noses" were installed; where one was obviously removed to show the hole for their photos. This was not damage, these were wooden circles screwed into the wall for decoration and which the hand railing sat on.
- The Tenants contend that they left the house clean and undamaged
- As per their evidence at tab 13 pg 74 the Landlord was at the house showing potential tenants so if there was that much damage why did he not mention it at the time of the showings
- Potential tenants started coming by to view the property as of July 2010
- As per their evidence they provided a copy of the Landlords' internet advertisement dated October 4, 2010 which notes it is available as of October 15, 2010 so this displays that they had a good idea that the house was fine
- The Landlords have increased the rent in these on line advertisements, first they listed it at \$2,990.00 per month and then at \$3,000.00 per month
- If this damage truly existed how could the Landlords not see it
- If the Landlords went to the trouble of getting receipts for photos or other costs why would they not provide receipts for their other items being claimed
- The Landlords did not provide receipts with proper dates, no business names, did not provide official receipts and their costs being claimed are vague
- What proof did the Landlords provide that these items were actually paid for

- It is just allegations that this property was not rentable for three months
- There is no evidence of broken windows or gouges in the walls
- The Landlords constantly mentioned a dirty shower door and are claiming \$1,000 plus \$675 for cleaning on their spread sheet
- It was not until two months after we left that the Landlords provide a witness statement about the condition of the shower stall, why wait two months to clean it
- Their application shows a request for two months rent not three months rent
- The Tenants anticipated the Landlords would claim they damaged the septic so they provided the evidence at tab 5 page 6 which indicates it was "cement like sewage" which is not normal
- The problems were found to be in the distribution box at the second pumping which is further away from the house and would take years of neglect to accumulate
- The Landlords claim it was the Tenants neglect that caused the well pump to break because of the leak at the garden hose or pipe. They contend that this is a red herring. They confirm the hose pipe leaked but this did not cause the well pump to break down. They were told that there was an underground pipe that had burst which caused the well pump to burn out.
- The Tenants stated the burst water pipe was located under the pavement and it burst because it was not installed low enough underground.
- Everyone, including the Landlords were aware of the leaking hose pipe and the Landlords did not patch the leak properly
- There was no mention of damages to the well pump in the Landlords' October 8, 2010 letter of damages and no mention that the Tenants would be responsible
- In the Tenants' evidence at tab 13 page 56 the Landlord writes "I know this is not your fault" when speaking about the well pump breaking
- The Tenant read her closing statement and stated they are seeking fair compensation as they feel they honoured their tenancy agreement and left the rental unit clean and undamaged
- They questioned the Landlords testimony about the dates their photos were taken as they noted one of the outside pictures displays the veranda with a railing
- They contest the property is still not rented because it is in a remote area, is a specialized property with high rent for a narrow market as per the Landlords evidence; and that it is not due to damage to the unit
- The onus is on the Landlords to clear issues up with their Tenants and to provide peace and quiet – the Tenants were under the assumption that they rented the house and surrounding property
- The male Landlord would be in the house unannounced several times during the tenancy

- They feel the Landlords' claims are outrageous and that the Landlords have the responsibility to repair and maintain their property

Prior to closing remarks the Landlords' Advocate posted direct questions to the Tenants as listed below. This is the only time during the hearing process that direct questions were posted.

- The Landlord's Advocate questioned the Tenants as follows:
  - Q: Please tell me where the ground was soggy and when did you tell the Landlords that the ground was soggy.
  - The Tenants replied stating there was no soggy ground that they had noticed therefore they did not report anything to the Landlords. They had learned after the end of their tenancy that the Landlords' workers discovered a burst pipe that was underground. They did not notice or see any problems and it took experts to find the problem.
- The Advocate stated that while the Landlords claim against the security deposit is extinguished their claim for damages is not. Furthermore she argues the Landlords are not limited to 15 days to make a claim for damages
- The Advocate stated she is of the opinion that receipts are not required and that the Landlords need only to prove there are damages or loss as per section 7 of the *Residential Tenancy Act*
- The Landlords' Advocate turned her questions towards the Landlords and asked:
  - Q: Did the Tenants ever phone you?
  - A: Yes, several times.
  - Q: Did they have your phone number?
  - A: Yes
- The Advocate referenced the Residential Tenancy Policy Guideline # 3 in support of the Landlords' claim that the property was not rentable due to damage
- The Landlords advised the rental property has not been re-rented as of yet (June 9, 2011)
- The Landlords' Closing Remarks
- The repair work was too much to do
- The Landlord had personal issues to deal with so they had to stop work on the property
- They changed their request for loss of rent because they evaluated what was fair at the time and thought two months not three months was fair
- The Landlords confirmed there were no inspections. The Tenants said they would participate for a move out but then they walked away shortly after they started the inspection

- They advertised the property because they needed to re-rent it right away
- The Landlords pointed out that in the Tenants' own submission they admit to burning the counter with their toaster oven
- They refute the Tenants' statements that they do not know about the missing items as most of them were in the rental house at the outset of the tenancy and are displayed in the photos provided in their evidence at tab 14 page 103. These photos were taken in 2008.

### Analysis

11.4 of the *Residential Tenancy Branch Rules of Procedure* provides that If a party does not provide evidence in advance in accordance with Rule 3.1 [documents that must be served] and Rule 3.5 [evidence not filed with the Application for Dispute Resolution], that party must bring to the dispute resolution proceeding sufficient copies of that evidence for all of the parties and the Dispute Resolution Officer. The Dispute Resolution Officer will decide whether to accept this evidence in accordance with Rule 11.5 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

At the closing of the March 14, 2011 hearing and again on April 11, 2011 all participants were advised due to the expiration of the hearing time the hearing would be reconvened at a future date. Each party was instructed not to submit additional evidence. Neither party submitted additional evidence prior to the April 11, 2011 reconvened hearing.

It was during the April 11, 2011 reconvened hearing which the Tenant and Occupant presented the merits of their application, each Landlord provided testimony in response and I asked my clarifying questions. Both Landlords were provided an opportunity to present evidence in response to the Tenant's claim.

At the closing of the April 11, 2011 hearing the parties were instructed a second time that I would not accept additional evidence prior to the next reconvened hearing. They were also advised that the next time we convened the Landlords would be presenting the merits to their application, followed by the Tenants' response and cross examination, and each party's closing remarks.

During the two month period between April 11, 2011 and the reconvening on June 9, 2011, the Landlords hired an advocate, reworked their response to the Tenant's presentation of their claim and submitted volumes of additional evidence to the Tenants and the *Residential Tenancy Branch*, contrary to my previous instructions.

Each reconvened hearing does not constitute a new hearing; rather they are a continuation of the initial hearing. Therefore I hold to Rule 3.1 and Rule 4.1 of the *Residential Tenancy Branch Rules of Procedures* which stipulate evidence must be provided in advance of the hearing.

I find that to accept the additional late evidence from the Landlords would prejudice the other party and would result in a breach of the principles of natural justice because the Tenants would be deprived of the ability to spend 2 months reworking their response to the Landlords' presentation of their claim. Therefore I decline to consider the Landlords' additional late evidence and the female Landlord's oral presentation of that evidence, pursuant to Rule 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*.

The Landlord's have stated they could not view the DVD evidence which was provided in the Tenants' evidence. Therefore the photos on the DVD will not be considered in my decision pursuant to Rule 11.5 and Rule 11.8 of the *Residential Tenancy Branch Rules of Procedure*.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

### **Tenant's claim \$18,007.00**

The evidence supports the fixed term tenancy ended September 30, 2010 and the Tenants' forwarding address was sent to the Landlords via registered mail September 27, 2010. The Landlords are deemed to have received the forwarding address October 2, 2010, five days after it was mailed in accordance with section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposits, to the tenant with interest or make application for dispute resolution claiming against the security and pet deposits.

In this case the Landlords were required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than October 17, 2010. The Landlords did not file their application until February 25, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security and pet deposit. Therefore, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security and pet deposits (2 x \$1,600.00) + (2 x \$1,600.00) plus interest on security and pet deposits from August 5, 2008 to July 7, 2011 of \$19.74 for a total amount of **\$6,419.74**.

Section 33(1) of the *Act* provides that in this section, "**emergency repairs**" means repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing (i) major leaks in pipes or the roof, (ii) damaged or blocked water or sewer pipes or plumbing fixtures, (iii) the primary heating system, (iv) damaged or defective locks that give access to a rental unit, (v) the electrical systems, or (vi) in prescribed circumstances, a rental unit or residential property.

Based on the aforementioned I find the Tenants' claim for repairs to the hot water tank, water pump, and sewage system meet the definition of emergency repairs.

Section 33 (2) of the *Act* provides the landlord must post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

There is sufficient evidence to support the Tenants had email communications with the Landlords for the periods of September 2008 to December 19 2008 and again beginning May 2009 until the end of the tenancy. I note there is no evidence before me that supports there were communications between the parties, email or otherwise between the period of December 20, 2008 and April 24, 2009.

I accept the Tenants' evidence that the Landlords failed to provide a contact telephone number and that when the Landlords called the call display showed that the number was unlisted or redirected.

Based on the aforementioned I find the Landlords breached section 33(2) of the Act as they failed to provide the Tenants with an emergency contact name and telephone number.

The parties communicated via e-mail December 14, 2008 pertaining to the frozen hot water source, as supported by the Tenants' evidence where the male Landlord is providing directions where the Tenants can locate the hot water tank and suggestions on what may be causing the problems. I note that at no time did the Landlord offer to have someone attend the rental unit to conduct repairs, during this communication; rather I find it clear that the Landlord was expecting the Tenants to deal with the situation.

I accept the Landlords' evidence that he informed the Tenants, via e-mail, that a cable needed to be installed on the hot water tank and that when they offered to install it, the Landlord agreed. There is no evidence to support the Landlord followed up this communication to ensure the cable was installed. The Landlord did not provide written instructions to the Tenants for the required maintenance of the hot water tank or anything else pertaining to the rental property.

After careful consideration of the evidence before me I find that a reasonable person ought to have known that when providing such detailed information as to the maintenance or operation of mechanical equipment written instructions would need to be provided to ensure the instructions could be carried out as requested.

The Landlords admit that at the outset of the tenancy they felt the need to provide the Tenants an orientation on how to manage the property and that this orientation with several instructions was provided orally with no written instructions provided.

I do not accept the Landlords' submission that they were not previously informed of the requirement for repairs or the Tenants' requests for reimbursement for repairs that were paid for the hot water tank, water pump, and sewage pump. Rather the evidence provided by the Tenants supports their testimony that they had informed the Landlords via e-mail, when they had contact with them and that they provided the receipts to the female Landlord in May 2009 which was followed up by an e-mail requesting payment in December 2009.

Section 33(5) of the Act provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenants' evidence included a photo copy of a cheque in the amount of \$84.00 which was the payment to the plumber who attended to repair the hot water tank. I accept this evidence as a receipt of payment for services rendered by the plumber.

Based on the aforementioned I find the Tenants have met the burden of proof for the cost of emergency repairs (Hot Water Tank, Water Pump, and Sewage Pumped and Repaired) and I approve their claim in the amount of **\$1,307.00**.

The Tenants seek \$500.00 for the loss of internet and television service. The tenancy agreement does not provide for uninterrupted service of internet or television service. I find that a reasonable person ought to have known that living on an Island could cause minor interruptions in service of this nature. Therefore I find there to be insufficient evidence to support this claim is the result of the Landlords' breach, and I dismiss the claim of \$500.00, without leave to reapply.

I accept the evidence supports the Landlords used bleach to treat the pond water however there is insufficient evidence to prove the water was unpottable and I dismiss the Tenants' claim of \$2,880.00, without leave to reapply.

On October 11, 2008, the Tenants paid the Landlords \$36,800.00 as rent for the entire first year of their tenancy which was scheduled to begin on October 15, 2008, as per the tenancy agreement. It was after receiving this payment that the Landlords informed the Tenants that their occupation date would be delayed as the Landlords had not yet vacated the rental house. I accept the Tenants' claim that the Landlords over held the rental property in breach of the tenancy agreement and I approve their claim in the amount of **\$200.00**.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find it undeniable that the Tenants have suffered a loss of quiet enjoyment for approximately two months between October 16, 2008 and November 28, 2008; prior to the Landlords departure from the country; and again December 20, 2009 to mid April 2010; during the period the Landlords were determining the problems with the well pump. Therefore I find the Tenants suffered a loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the Landlords attended the rental unit during various times of the day and week and were inside or looking into the rental unit unannounced for short periods of time.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction of \$3,520.00, based on Section 27, they have provided no evidence indicating that the Landlords have breached section 27 of the *Act*, rather their evidence pertains to a breach of section 28 of the *Act* and they have included this claim and their evidence under the heading for loss of quiet enjoyment.

After careful consideration of the aforementioned and evidence I find the \$3,200.00 claimed for loss of privacy and the \$3,520.00 claimed for reduced rent meet the requirements for claims of loss of quiet enjoyment and aggravated damages. I find the Tenants are entitled to compensation in the amount of **\$4,400.00** pursuant to section 67 of the *Act*.

The Tenants have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Total amount awarded to the Tenants above: \$12,376.74

**Landlords' claim \$23,447.35**

Section 24 (2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (a) does not comply with section 23 (3) *[2 opportunities for inspection]*, (b) having complied with section 23 (3), does not participate on either occasion, or (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

This section prevents a landlord from a claim for damages against the security deposit however it does not prevent a landlord for making a claim against a tenant for damages.

The *Residential Tenancy Regulation # 21* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlords rely on statements obtained from real estate agents who viewed the property two months prior to the onset of the tenancy as their evidence to support the condition of the rental property at the onset of the tenancy. In support of the property condition at the end of the tenancy the Landlords rely on photos taken of the inside of the rental house.

A significant factor in my considerations is the credibility of the evidence. I am required to consider the Landlords' evidence not on the basis of whether it "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The evidence supports that in October 2010 the Landlords sent the Tenants a list of damage and loss totalling \$6,821.60 which was arbitrarily increased to \$23,447.35 in the Landlords application for dispute resolution which was filed four months after the Tenants made their application for dispute resolution in the amount of \$18,007.00.

In the absence of evidence to support the actual amount of loss and in considering the Landlords' evidence of the October 2010 list of claims totalling \$6,821.60, I find that on a balance of probabilities the Landlords simply altered their claim in a retaliatory fashion so it would be a higher amount than that being claimed by the Tenants. That being said,

the *Residential Tenancy Act* provides that claims can be made for damage or loss up to two years from the end of the tenancy; therefore the Landlords were at liberty to increase the amount they made their claim for. The Landlords are however still required to meet the burden of proof that these losses were suffered as a result of the tenancy.

The evidence supports the tenancy agreement provides that the Tenants were to maintain the property in its' current state. The Landlords allege they had verbal discussions and agreement from the Tenants as to what maintaining the property entailed.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In the absence of a move in inspection report or a preponderance of evidence which proves the condition of the exterior landscape of the rental property at the onset of the tenancy and without detailed written documentation of what was agreed to by the Tenants for maintenance of the property, I find there to be insufficient evidence to meet the burden of proof that the Tenants breached the Act, regulation or tenancy agreement by failing to maintain the property in its current state. Therefore I dismiss the Landlords' claim of \$1,139.20 for landscaping and machine work of \$112.00, without leave to reapply.

I accept the Landlords' evidence which was in the form of a notarized letter from a real estate agent that spoke to the condition of the rental house at the end of the tenancy. That being said, I accept this letter with caution given to the descriptive language used by the realtor as I am unclear of the relationship between the Landlords' and the realtor and the potential for ulterior motives on the part of the realtor. That being said, I accept that this letter indicates that the condition of the interior of the house was worse at the end of the tenancy when he saw the property in December 2010 from that when he first saw the property in August 2008, prior to the tenancy.

Section 32 of the *Act* provides (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After careful consideration of the aforementioned I find the Landlords have met the burden of proof that the Tenants breached sections 32 (1) and (2) of the Act. That being said, in the absence of a move in or move out inspection report and in the absence of copies of receipts proving the actual cost of the loss being claimed for the interior of the rental property, I find there to be insufficient evidence to meet the burden of proof for the amounts being claimed by the Landlords for cleaning (1,761.42), replacement of carpets (\$980.00), wood floor and stair repair (\$836.00), wall repairs and plastering (\$534.80), painting (\$300.00), and damage to appliances (\$419.12) totaling \$4,831.34.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there is insufficient evidence to prove the amount of the loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlords are entitled to nominal damages and award them the following: cleaning labour \$1,600.00 (2 x 40 hours x \$20.00 per hour), cleaning supplies \$25.00, carpets \$300.00, wood floor and stair repair \$160.00 (8 hours x \$20.00), wall repairs, plastering \$50.00, painting \$250.00, damage to appliances \$175.00 for a total amount of **\$2,560.00**. The balance of \$2,271.34 (\$4,831.34 – 2,560.00) is hereby dismissed without leave to reapply.

In the presence of the Tenants’ opposing evidence that the work to the tile around the bathtub was a renovation project; that damage to the threshold and doors were present at the outset; and that their dogs did not damage the desk top, I find there to be insufficient evidence to support the Landlords’ claim of loss. Therefore I dismiss the claims of \$448.00 for retiling and \$532.00 for repairs to the threshold, doors, and desk top, without leave to reapply.

In the absence of a move in inventory list or inspection report and after considering the Landlords did not fully vacate the house prior to the onset of the tenancy agreement, I find there to be insufficient evidence to support the amounts claimed by the Landlords for the alleged missing personal possessions (\$429.76) or for damages allegedly caused to their possessions (\$826.18); with the exception of the burnt kitchen countertop which is claimed at item 23 for the amount of \$112.00. Based on the aforementioned I dismiss the amount claimed of \$1,143.94 (\$429.76 + 826.18 – 112.00), without leave to reapply.

The evidence provided by the Tenants supports the Landlords’ claim that damage was caused to the kitchen countertop during the Tenants’ tenancy. I accept the amount

claimed to be a reasonable amount and I award the Landlords **\$112.00** for damage to the kitchen counter, pursuant to section 67 of the *Act*.

The Landlords seek \$1,300.30 for septic tank repairs and \$2,374.57 for the well pump replacement due to what they allege was the Tenants' negligence.

There is insufficient evidence to prove the septic tank had been regularly maintained prior to the tenancy and there is no evidence before me that supports it was the Tenants' actions that caused the septic to back up into the lower bathroom or to cause the septic pipe to burst. On the contrary the evidence provided by the Tenants supports the septic system and field had been neglected. The Landlords' testified they treated the pond water with bleach and their evidence page 76 further indicates problems in the septic tank were caused by the presence of "bleach or some other product had been killing the bacteria in the tank". Based on the aforementioned there is insufficient evidence to prove the septic tank, field, or septic line repairs were required due to the Tenants' negligence or breach, therefore I dismiss the Landlords' claim of \$1,300.30, without leave to reapply.

Furthermore the evidence supports that both parties were aware of water streaming from the garden hose pipe and neither party took action to properly repair this leak. There is insufficient evidence to support it was this garden hose pipe leak that caused the well pump to burn out. Rather, the Tenants provided evidence that it was later determined by the Landlords' contractors that a pipe under the concrete had burst which caused the pump to run continuously and burn out. I note that the Landlords did not refute this evidence.

Therefore in the presence of opposing testimony, I find there to be insufficient evidence to support the well pump burnt out as a result of the Tenants' negligence or breach and I hereby dismiss the Landlords' claim for the well pump repair of \$2,374.57, without leave to reapply.

The *Residential Tenancy Policy Guideline #1* provides that (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.

The Tenants admitted to removing the Landlords' satellite dishes and wiring from the rental house and installing a new satellite dish and wiring installed without the Landlords prior approval; and did not re-install the satellite dishes and wiring at the end of the tenancy. Based on the aforementioned I find the Landlords have met the burden of proof and I approve their claim of **\$200.00**.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

*A pecuniary allowance....Generally "costs" do not include fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*

In relation to travel fees (ferry, mileage, time \$3,354.00), and fees to compile and serve evidence (photocopying, photo development, postal \$200.00) I find that the Landlords have chosen to incur these costs that cannot be assumed by the Tenants.

Therefore, I find that the Landlords may not claim these fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. I therefore dismiss the Landlords' claim of \$3,554.00 (\$3,354.00 + \$200.00), without leave to reapply.

Having found above that the Tenants breached section 32 of the Act by leaving the rental unit in a worse state at the end of the tenancy I find the Landlords would not have been able to re-rent the unit immediately following the end of the tenancy. That being said I find there to be insufficient evidence to support it would take two months to restore the rental unit to a condition that it could be occupied. There is evidence which supports the Landlords did not act in a timely manner due to their own personal circumstances. I accept the Landlords may have been negotiating with a potential tenant however, I do not accept the evidence which suggests the Landlords had entered into a tenancy agreement with a new renter at \$3,800.00 as no signed agreement was provided in evidence. Based on the aforementioned, I find the Landlords have met the burden of proof to claim loss of rent for one month, in the amount of **\$3,200.00**. The balance of \$4,400.00 (\$7600.00 - \$3,200.00) loss of rent is dismissed without leave to reapply.

The Landlords have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Total amount awarded to the Landlords above: **\$6,122.00**

**Monetary Order** – I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

|  |                   |
|--|-------------------|
| Tenants' award                                 | \$12,376.74       |
| LESS: Landlords' award                         | -6122.00          |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b> | <b>\$6,254.74</b> |

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$6,254.74**. This Order is legally binding and must be served upon the Landlords.

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 08, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: Enforcing a Monetary Order
- How and when to have a decision or order clarified or corrected:  
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)





# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 770356**  
**Additional File(s):763987**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**, Tenant(s),**  
Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Bowen Island, BC

Date of Hearing: March 14, 2011, April 11, 2011, June 9, 2011, by conference call.

Date of Decision: July 08, 2011

Attending:

For the Landlord:

s.22

Landlord  
andlord

On June 9, 2011  
for the Landlords

s.22

attended as Legal Advocate

For the Tenant:

s.22

s.22

Tenant  
Occupant  
Advocate for the Tenants

## **DECISION**

**Dispute Codes**      O MNSD MNDC MND FF  
                                 MNR MNDC MNSD FF

### **Preliminary Issues**

Each person who attended the dispute resolution teleconference hearing and subsequent reconvened hearings were given an opportunity to present their arguments and/or testimony with the exception of the Tenants' witness who appeared at the teleconference hearing on March 14, 2011.

After careful consideration of the volume of evidence before me and the amount of testimony that was anticipated for both applications I ordered all witness testimony to be submitted and received by me and the opposing party, in writing, no later than March 25, 2011, pursuant to Rules 11.11, 3.1, 4.1, and 8.5 of the *Residential Tenancy Branch Rules of Procedure*.

I note that the male person named as the applicant in the claim filed against the Tenants and who is named as one of the respondent Landlords in the Tenants' application for dispute resolution is not named as a landlord in the written fixed term tenancy agreement. The female who is named as the Landlord on the fixed term tenancy agreement and as a respondent Landlord on the Tenant's application for dispute resolution is not named in the Landlord's application for dispute resolution as a Landlord. The male testified that both he and his wife are owners of the rental property. Both the male and female listed as Landlords in attendance for this dispute were in attendance at the teleconference hearing and each subsequent reconvened hearing.

**As per Section 1 of the Act a "landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Applying the above definition, I find that the two Owners are proper parties to this proceeding. Therefore I amended the style of cause for these applications to include both the male and female Landlords' name pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

The person who attended with the Tenant and is named as an Occupant in attendance for this dispute is the Tenant's s.22 who lived at the rental property with the Tenant for the duration of this tenancy. It is not uncommon for adult children to reside with their parents and not be listed as a tenant as the parent is paying the rent. That being said and pursuant to section 8.3 of the *Residential Tenancy Branch Rules of Procedure*, I allowed the Occupant to attend the hearings and provide testimony as s.22 resided at the rental unit for the duration of the tenancy, assisted s.22 in putting their evidence together, and was attending as support for s.22, the Tenant.

### Introduction

This dispute dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants and were heard by teleconference hearing on March 14, 2011 for one hour, and reconvened on April 11, 2011 for three hours and ten minutes, and June 9, 2011 for three hours and five minutes.

The Landlords filed seeking a Monetary Order for damage to the unit site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and security deposit, to recover the cost of the filing fee from the Tenants for this application, and for other reasons which they described in the details of their dispute on the application as "respondents damaged the residence making it unable to rent for 3 months in addition to cost of damages – respondents did not fulfill their obligations in regarding maintenance as per lease agreement [sic].

The Tenants filed seeking a Monetary Order for the cost of emergency repairs, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, return of double their pet and security deposit, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of hearing documents and the volumes of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Landlords appeared at the first two hearings without the assistance of a legal advocate (Landlord's Advocate) who attended the June 9, 2011 hearing. At the outset of the June 9, 2011 reconvened hearing the Landlords' Advocate introduced herself.

After stating her name she said s.22 I am here as the Landlords' advocate. s.22

s.22 I would like to know what Rule of Procedure you used to state no additional evidence would be accepted?"

I informed the Landlord's Advocate that I would not use valuable hearing time to argue my interpretation of the *Residential Tenancy Act*, Regulation, Rules of Procedure, or any other law with her. I explained that she was at liberty to ask me questions which I would document and respond to in my written decision. I note that no further questions were put forward by the Landlords' Advocate and the answer to her question about evidence is listed below in my analysis.

#### Issue(s) to be Decided

1. Have the Tenants met the burden of proof to be entitled to reimbursement of the cost of emergency repairs they had completed to the rental property?
2. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, have the Tenants met the burden of proof to be awarded monetary compensation as a result of that breach?
4. Have the Tenants met the burden of proof to be awarded the return of double their security deposit?
5. Have the Landlords met the requirements of the *Residential Tenancy Act* to be entitled to keep the security and pet deposits?
6. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

7. If so, have the Landlords met the burden of proof to be awarded monetary compensation as a result of that breach?

### Background and Evidence

The *Residential Tenancy Branch Rules of Procedure # 11.2* provides that a party must present only evidence that is relevant to the application being heard. Over the course of the seven hours and 15 minutes of the teleconference hearing volumes of evidence was presented, some of which was not relevant. Following is a summary of the relevant evidence.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement which began October 15, 2008 and ended September 30, 2010. Rent was payable on the first of each month in the amount of \$3,200.00. On August 5, 2008 the Tenants paid \$1,600.00 as the security deposit and \$1,600.00 as the pet deposit.

The Landlords testified they were not able to open the DVD of photos provided by the Tenants as evidence. Then they advised that their application and monetary amounts claimed are estimates based on their educated guess.

Due to the volume of relevant information provided in the testimony I have chosen to list the information in point form under each main category of compensation being claimed as follows:

### **Tenants' Claim**

#### **1) \$6,400.00 Return of Double the Security and Pet Deposits**

- On September 27, 2010 a registered letter was sent to the Landlords with the Tenants' forwarding address, requesting a move out inspection, and a request for the return of their security and pet deposits
- As of the hearing, March 14, 2011 the deposits have not been returned to the Tenants
- The Tenants attended the move out walk through however the Landlords never completed a formal report and nothing was signed
- The Tenants stated they left the rental property in clean, undamaged condition.
- Two witnesses attended on October 1, 2010 at 2:00 p.m. and provided written statements as to the condition of the rental property, provided in the Tenants' evidence
- They provided numerous photos in their evidence which support the condition of the unit

- The Landlords did not file a claim to keep the security and pet deposits until more than three months after the Tenants filed their claim for dispute resolution
- The Landlords provided a walk through orientation however no walk through inspection was completed and no forms were completed at the beginning or the end of the tenancy

**2) \$1,307.00 Emergency Repairs**

- The Tenants stated they were led to believe that inside the envelope marked “emergency preparedness” that there would be emergency contact numbers inside, there were not
- The Landlords left to go out of the country November 27, 2008. The female Landlord returned in May 2009 and the male Landlord returned August or September 2009.
- There was no Landlord or emergency contact around to make the decisions

**- 2(A)\$84.00 Hot Water Tank**

- They had no hot water as of December 13, 2008; they had problems locating the hot water tank when they later found out that it was outside.
- They called a plumber and were told the hot water tank needed to be insulated and it cost \$84.00. This was no fault of theirs as the hot water tank was outside and it was a cold winter

**- 2(B)\$978.00 Water Pump**

- When they had no hot water on December 13, 2008 they noticed a leak in the water pump and asked the plumber to check it out.
- The plumber also found a leak coming from the bath tub.
- They were instructed by the Landlord during their orientation to watch the water pump to make sure there were no water leaks
- The plumber advised the water pump was going to break down, they told the male Landlord who said the plumber was wrong and told them to tighten up the connections and to keep it warm
- January 27, 2009 the water pump seized. There was no communication with the Landlord at this time as they could not reach him on Skype so they had no water for 4 or 5 days
- The plumber told them the water pump could not be fixed so they paid to have a new water pump purchased and installed
- It was not until after the new pump was installed that the male Landlord claimed there was warranty on the old water pump
- They gave copies of the invoices for \$84.00 and \$978.00 from the plumber to the female Landlord in May 2009 when she returned to the country and did an inspection. It was during this inspection that they showed her the water leak in the outside garden hose and there was no response

**- 2(C)\$245.00 Sewage pumped and Repaired**

- The sewage pump issue began in August 2009 when the sewage backed up into the downstairs bathtub and toilets
- They were told by the male Landlord at the outset that the septic tank was pumped out just before they were beginning their tenancy
- A snake was used as they thought it was simply plugged
- They ended up having to hire a plumber who determined that the main sewage pipe that ran from the house to the tank, up to about thirty feet, burst because the solids from the tank were backing up towards the house
- On August 26, 2009 they paid \$245.70 to have the pipe fixed
- The male Landlord returned to the country and they discuss all of these issues. The Tenants request that the Landlords pump out the septic tank. The male Landlord tells the Tenants to have it pumped out and they will pay them for it. The tank was pumped September 3, 2009 for a cost of \$438.37 and the Landlord did reimburse them.
- They were only in the house for eight months at the time the tank was first pumped yet as per their evidence the tank had not been pumped in years. They were told by the plumber that this is the worst issue he had ever seen and that pumping out the tank was only a temporary fix. The plumber stated that the field and tank had been neglected for years, as supported by the plumber's letter provided in tab 5 of the Tenants' evidence.
- The Tenants stated they were left with having to deal with this septic issue which involved cleaning up a lot of mess and the inconvenience of arranging to have the work completed.
- They were tired of not getting a response to their requests for reimbursement from the Landlords so they sent a firm email in December 2009 requesting the payment

**3) \$10,300.00 for Damage or Loss**

**3(A) \$500.00 for Loss of Internet and Television Service**

- They had a verbal discussion with the Landlord at the outset of the tenancy where they explained that internet service was mandatory
- Their evidence included a copy of the advertisement placed by the Landlord to rent the property which is located after tab 9. The advertisement lists telephone, internet , and television
- They were told by the Landlords the name of the service provider so they signed up with them for one year. The service was great for six months and then it became intermittent and riddled with problems.
- They had the service provider come out and inspect the property and they were told that the cable was not hooked up properly and it was an exposed line which is negatively affected by the winter weather
- They kept telling the male Landlord of the problems but he just never said a word

- Had they known of the problems with the service at the outset they would have had satellite from the beginning.
- There were satellite dishes at the property but the Landlords did not offer them for their use
- The Tenants spent over \$1,000.00 to have a new satellite dish hooked up with a different service provider
- The service provider owns the dish so when they moved out it was left at the rental unit

**3(B) \$2,880.00 for Unpotable Water from December 2009 to April 2010**

- During Christmas 2009 the water began to smell murky like lagoon or pond water and it appeared to have dirt in it
- The water stopped completely and then came back on again
- They had to boil their drinking water and did laundry and took showers elsewhere
- They e-mailed the Landlords to ask what was going on and if this water was safe
- The Landlord responded and never told the Tenants that the well had broken down and he had switched over to a pond with fish in it to provide their water
- The male Landlord was at the property often during this period to adjust the water pump and put filters on to accommodate the pond water. Then the pump got sluggish and stopped all together.
- When they complained to the Landlord he told them to buy themselves better filters at which time he told them it would be fixed in a few weeks
- The Tenants said this situation was a nightmare as they had arguments with the Landlords verbally and via emails about how their contract provides for potable water.
- The copy of the e-mail between them and the Landlord which is located on page 56 of their evidence supports that they were not informed of the well breaking in December 2009 until March 27, 2010. The well was not repaired and up and running again until early April 2010.
- The male Landlord was constantly on the property so we kept thinking he would fix it and before we knew it 4 ½ months had gone by.
- They had contacted the *Residential Tenancy Branch* and were told to work through this with the Landlord in a methodical way and make a claim later; which is what they did
- They continued to buy bottled water and went to family and friends to do laundry and shower

**3(C) \$6,920.00 for Loss of Quiet Enjoyment**

- 3(C)(i) \$200.00 for Move in Date delayed
- Their tenancy agreement was to begin October 15, 2008 and they had arranged movers for that date

- The date was delayed until October 17, 2008 by the Landlords and when they arrived the Landlords still had many of their possessions inside the house
- They are seeking \$100.00 for their inconvenience for each day they were delayed
- 3(C)(ii) **\$3,200.00** Loss of Privacy due to Landlords Attendance at Property
- They are seeking the return of rent from October 17 to November 28, 2008 as the Landlords left furniture and their bird in a bird cage inside the house
- The male Landlord continued to enter the house without their permission or prior notice
- The Landlords left boxes of possessions outside
- The Landlords were building a storage building on the property which provided a constant echo of saws, hammering, talking, and cars driving by
- The Landlords blocked their driveway with equipment and would drive his ATV up to the house to pick up tools
- On two separate occasions the male Landlord entered the house, without notice, and startled the Occupant, who at one time was in her night clothes
- The Occupant stated the male Landlord told her she would have to bear with it until they were gone out of the country
- The male Landlord would also show up to fix things around the property without notice and would show up intermittently as it fit into his schedule
- 3(C)(iii) **\$3,520.00** Reduced Rent
- They are seeking reduced rent equal to 5% (\$160.00 for each of the 22 months of their tenancy) for the following:
- Having to deal with equipment constantly breaking that was due to no fault of their own
- Being told mistruths that everything was new and in pristine condition
- The solar panels on the roof never worked
- The roof leaked and they had problems with the water, septic, and internet
- They provided copies of the Landlords' new advertisement where they are saying everything is all good again
- They ended up feeling insecure as their patience ran out
- They felt the male Landlord's attitude towards them was a problem as he ignored them, called them whiners, told them this is country life, and he questioned why they could not handle it
- They paid their rent and did not get their quiet enjoyment when the Landlord returned after 9 months of being out of the country as he caused unreasonable disturbances, he was always around, he would open doors without knocking and no notice was provided when he would be there
- He would tell them he was coming to his storage shed or the circle but 15 minutes later he would be at the front door and would open the door or look

inside the house through the windows. The front of the house is all windows so he could see everything inside

- There was no reason for him to be at the door and his appearances were random which caused a constant low grade nervousness
- Often he would not come to the property on the day he listed in his e-mails and then would just show up some other day unannounced
- When the Landlords would not leave or be restricted from entering all "hell would break loose" because they would become offended
- If they asked nicely for advance notice the Landlord would send e-mails stating things like "you want to play by the book" which indicates to them that the Landlords were offended.
- The Landlords would later become confrontational with them.

The Landlords provided the following response to the Tenants' submission during the April 11, 2011 hearing:

**1) \$6,400.00 Double the Return of Security and Pet Deposits**

- The Landlords confirmed they do not have an Order from the Residential Tenancy Branch authorizing them to keep the security deposit
- The Landlords do not have the Tenants' written permission to keep the security deposit
- They made no applications for dispute resolution to keep the security and pet deposits until they filed their application on February 25, 2011.
- There were a few attempts to conduct a move out inspection as supported by the copies of emails provided on pages 57 and 58 of their evidence. The Landlords attended October 1, 2010 and left because the rental property was not cleaned up. They attended again on October 2, 2010.
- No final notice of inspection was issued and no move out inspection report was completed or signed by both parties.
- Rent was paid in full up to September 30, 2010.
- The Landlords state the Tenants refused to attend the move out inspection as supported by the e-mail found in their evidence after tab 11 page 58

**2) \$1,307.00 Emergency Repairs**

- **2(A)\$84.00 Hot Water Tank**
- They provided the Tenants with an orientation of the property at the outset of the tenancy at which time they told the Tenants verbally that they need to install a cable to the hot water tank before the winter arrived
- The instructions how to install the hot water tank cable were provided verbally and no written instructions or notes were provided to the Tenants

- The male Landlord referenced an e-mail provided in the Tenants' evidence on page 45 where he indicates that he needed to install the cable
- He questions the evidence provided by the plumber as the hot water tank did not freeze it was the water line that froze
- He referred to his evidence which displays that the outside temperature went below freezing (tab 4 pages 21 & 22)
- This hot water tank has no tank so the plumber's evidence is wrong
- The Landlords stated they are faced with having to defend themselves to items the Tenants never requested before as noted in the email they provided in their evidence (tab 4 page 29)
- They contend that all of the Tenants' emails were answered and they were never presented with a bill until they made this claim. They never have received a copy of the \$84.00 bill only a copy of a cheque
- **2(B)\$978.00 Water Pump**
- The Tenants said their plumber said the water pump froze however the pump is located inside the laundry room that has a heater, so if it froze it was due to the Tenants' negligence
- Their water pump was not an old pump; it was recently new, about two years old.
- The Landlords did not provide evidence as to the age of the water pump and never thought to bother looking for it
- The Landlords are of the opinion that the water pump broke because it froze
- They argued that they never saw the broken pump, they never saw an invoice, the Tenants never asked to be reimbursed until now, they never brought the issue up with the Landlords prior to making their application for dispute resolution.
- The Landlords confirmed they saw the new water pump during one of their inspections of the property but never questioned the Tenants about it
- The Landlords stated they did not remember how they heard about the problems with the water pump
- The Landlords stated they were not given an opportunity to participate in the repair and they suggest that it broke on the same day as the hot water tank
- **2(C)\$245.00 Sewage pump**
- The Landlords advised the septic tank backed up on August 29, 2009 and the only bill that was presented to the Landlords was for the pumping out of the tank which they reimbursed the Tenants for.
- The Landlords claim the problems were caused by the Tenants putting improper products into the septic as they had had it pumped out prior to the tenancy
- The Landlords advised they do not have proof that the septic was pumped out prior to the tenancy

- The Landlords stated they were not given notice that the sewage pipe was broken and the first time they saw the bill for this repair was two years later

**3) \$10,300.00 for Damage or Loss**

**3(A) \$500.00 for Loss of Internet and Television Service**

- The Tenants never contacted the Landlords about their decision to have satellite installed
- The Landlords stated this information was all new to them when they read the Tenants claim
- Their internet provider served them for over 15 years and their next door neighbour said they have never had any problems
- They reference an e-mail they provided in evidence (tab 7) where the male Landlord wrote to the Tenants how their service has been fine for over 20 years and now their service provider has stopped providing them with service.
- There were two existing satellite dishes that were previously installed at the house that the Tenants disconnected and left all the wires and dishes behind

**3(B) \$2,880.00 for Unpottable Water from December 2009 to April 2010**

- The male Landlord confirmed the water smelled like chlorine because he was treating the pond water with bleach
- This pond water is fed into a holding tank by gravity
- The Landlords stated there was an underground water line that fills the water holding tank, by gravity, and then an automatic valve to keep the tank full
- The pond feeds into the tank in an emergency or if switched manually
- The Landlords confirmed their well is shared with the neighbouring property and that the deep well pump was only four years old. They did not provide evidence as to the age of this well pump
- The Landlords received an email from their neighbour advising of a problem with the well pump and states that there was an 8ft water spray coming from the Tenants' outside hose
- The Landlord referenced an email dated May 3, 2009 at tab 9 in his evidence where the neighbour informs the Landlords of the water spraying from the Tenants' hose; the Tenants told him the water spray was fixed
- They had previously instructed the Tenants to keep the outside hose closed however the plumber opened the hose which caused a huge leak which the Landlords state was the cause the deep well pump broke
- The Landlords stated the Tenants allowed this water to continue to leak from May 3, 2009 to January 2010 which caused their deep well to burn out
- The Landlords confirmed they did not know if the Tenants used this hose intermittently or not and they did not supply documentary evidence to prove what caused the water pump to burn out
- The male Landlord advised that he does most of the repair work himself

- The Landlords did not provide the Tenants with notice that they were changing the water supply from well water over to pond water
- The male Landlord told the male Tenant in January of a problem with the well however there was never a loss of water to the house
- The Landlord claims it was a process of elimination to determine the problem with the well. He saw the water pump did not have enough pressure to fill the tank; he waited for parts and good weather to be able to install the new pump
- The Landlord confirmed his neighbour paid 50% of the cost of the repair
- The Landlords kept providing water even though it was pond water
- He agreed the water was brown with the rain and run off however he chlorinated the water with bleach after he tested it and measured the required amount of bleach required.

**3(C) \$6,920.00 for Loss of Quiet Enjoyment**

- 3(C)(i) \$200.00 for Move in Date delayed
- The Landlords confirmed they were late in moving out of the house
- They contend they were out by October 16, 2008 and not October 17, 2008 as claimed by the Tenants
- The Tenants were not given the keys to move into the rental unit until October 16, 2008 even though the contract says start of the tenancy was October 15, 2008
- The Landlords stated they spent October 17, 2008 in a hotel but did not provide evidence to support this
- The Landlords confirmed they still had possessions inside and outside the rental unit and originally the Landlords property was to be stored in one side of the carport. they later verbally agreed to allow the Tenants to have both sides of the carport
- They stated the Tenants initially requested to keep some of the Landlords' furniture and the Landlords' bird inside the house and later changed their mind so the Landlords removed those items
- They worked through things as a trade off
- 3(C)(ii) \$3,200.00 Loss of Privacy due to Landlords Attendance at Property
- The Landlords pointed out section 3(b) of their lease which is found after tab 2 page 14 of their evidence which states that the Tenants have non-exclusive use of the property
- 3(C)(iii) \$3,520.00 Reduced Rent
- First the Tenants say we are not accessible so they have to do the repairs and then they say we are there all of the time never giving them their privacy
- The male Landlord said the Tenants' testimony is all false
- He confirms he was building a storage shed and working on the shed roof 700 feet away from the house but he never disturbed them

- The Landlord referenced an e-mail dated June 17, 2009, (tab 8 of their evidence) where the Tenants wrote them to advise everything was working great and they had no problems
- They did not constantly inspect the house and only did one house inspection as supported by the e-mail provided in their evidence after tab 8 on page 38

At this point the hearing time allotted for this reconvened hearing (April 11, 2011) was about to expire. I instructed all parties that we would reconvene for one final hearing and they would be notified in writing of the final reconvened hearing date and time. The parties were advised that no additional evidence would be accepted by either party and we would begin the next hearing with the Landlords presenting the merits of their application followed by the Tenants' response and closing remarks.

At the outset of the June 9, 2011 hearing I explained I would not be accepting the additional evidence provided by the Landlords as I had previously instructed all parties not to send additional evidence. The Landlords responded by claiming I did not allow the female Landlord an opportunity in the previous hearing to provide testimony in response to the Tenants' claim. The Landlords stated they felt I was not able to understand the male Landlord through his accent. I reminded the Landlords how I encouraged the female Landlord to provide testimony during the April 11, 2011 reconvened hearing and I repeated several pieces of testimony provided by the female Landlord. I also pointed out I had no problems understanding the male Landlord. The Landlords acknowledged this and apologized.

I then turned the floor over to the Landlords to begin presenting their submission at which time the female Landlord proceeded to read an eleven page submission which was created after the April 11, 2011 reconvened hearing and was a reconstruction of their response to the Tenants' claim that they had provided in the April 11, 2011 reconvened hearing.

The Floor was then turned to the Tenants for their response. The Tenants' Advocate submitted the following:

- He agreed that the law of equity should be applied if possible for residential tenancy matters
- His reading of the law is that the Dispute Resolution Officer does not have discretion to refuse payment of double the security and pet deposits as it states double payment "must" be made
- He is of the opinion that a Dispute Resolution Officer has the ability to refuse evidence based on their discretion

- The Tenants made requests and attempts to have their deposits returned, they did not walk away from their deposits as alleged in the Landlord's reconstructed submission
- It is the Tenants' right to apply for these claims
- Exceptional circumstances as quoted in the Landlords' reconstructed submission do not apply here, the Landlords simply made no effort to apply to keep the deposits
- The references to claims made for damages should be ignored as the Landlords' extinguished their rights to claim against the deposits when they failed to conduct a move in inspection and complete the report
- He agrees that the Landlords may be able to claim for cleaning
- In response to the e-mail the Landlords' provided in evidence at page 58 relates to a contentious issue at the time of move out yet they have phrased it in a neutral manner. The first line is very clear when they write "in all honesty". He contends this could not be clearer going into a conflict. There was no conciliatory note to it and the Landlords sounded very threatening. The Tenants did not want to respond to this so they gave the Landlords time to respond and return their deposits.

The Occupant testified and questioned the Landlords' claim of extraordinary circumstances. The Tenants sent their registered letter requesting their deposits. The Landlords sent them a report October 8, 2010 listing damages of \$6,821.60 and then the Landlords wait until February 25, 2011 to make their application, more than 3 months after the Tenants file their application on November 8, 2010. She wondered how the Landlords' delay would be extraordinary circumstances.

The Landlords' Advocate submitted that the *Kikals* decision is clear with respect to doubling deposits and that it is not the amount of time that is at issue. She continued by arguing that the Landlords were estopped by the Tenants when the Tenants failed to respond to the Landlords' report.

### **Landlords' Claim**

The Landlords referenced a two page spreadsheet titled "summary of damage from tenancy" which they provided in their original evidence at tab 13 and totals \$23,447.35 for their claim. This spreadsheet was referenced during the Landlords' testimony while presenting the merits of their claim.

- The Landlords read sections 32(2) and 32(4) of the *Act*, and from Policy Guideline #1.

- They confirmed their claim represents estimated costs and that the actual costs are above what they have claimed.
- They stated that at the onset of the tenancy the house was newly painted and the floors were freshly varnished, they did not provide evidence to support this work was completed.
- They had a new hot water heater installed prior to the tenancy

### **Landscaping**

- They had beautiful flower beds, lawn and patio
- They had realtors attend in August 2008 as supported by the email they provided in evidence at tab 11 page 53 and a letter at tab 11 pages 64-65
- A copy of the property appraisal is provided at tab 11 pages 48-52
- They state the Tenants agreed to pay their rent one year in advance because the property was in good condition
- The Tenants assured the Landlords they would take care of keeping the lawns and gardens maintained however they were not maintaining the grass and did not attend to the flower planters or flower beds that were near the house
- At the end of the tenancy the Landlords stated they found the planters were all emptied into the flower beds overtop of ashes from the fireplace
- All of the perennial plants were gone and they should have lasted about ten years
- A landscape quote was provided at tab 21 pages 189-190 in the evidence provided after the April 11, 2011 reconvened hearing (referred to as "late evidence" for the remainder of this decision).
- The Landlord had claimed \$179.20 to refill and replant the half barrels.
- Item #'s 37, 58, 59
- **\$1,139.20** for their claim as listed above for landscaping

### **Cleaning**

- Landlords seek \$25.00 per hour plus HST as quoted
- They claim the inside of the house required extensive cleaning at the end of the tenancy
- The shower stall door required extra cleaning with a corrosive cleaner to be able to remove the scum. Photos were provided after tab 16 pages 110- 125 and tab 17 page 174.
- Receipts were provided in the late evidence after tab 21 in support of the costs for cleaning supplies, kitchen cleaning \$42.00, shower door cleaning \$28.00, white sofa, \$150.00, clean up after mice droppings \$56.00, mice traps, clean out the gutters, pressure wash the outside of the house, and overall house cleaning of 40 hours.
- Item #'s 1, 12, 27, 29, 30, 36, 42, 52, 53
- **\$1,761.42** for their claim as listed above for cleaning

### **Carpets**

- The Landlords claim they had to replace the carpets because the Tenants' dogs soiled them repeatedly
- They know the dogs soiled repeatedly because they saw stains on the underlay and the wooden subfloor when they removed the carpets
- The carpets were 7 years old and there were 5.70 square feet for at total of \$1,995.00. After considering the depreciated value they are seeking partial payment
- A receipt was provided in the late evidence after tab 21
- **\$980.00** for their claim as listed above for carpets (item 32)

### **Wood Floors and Stairs**

- The floors on the main level had to be refinished and were only 10 years old
- The upstairs floors were spot refinished and were new
- The damage is referenced in their photos found after tab 13 and claimed at items #10, 17, 26
- The wood floor refinishing was completed by the Landlords at the end of October 2010 so there are no receipts to provide
- **\$836.00** for their claim as listed above for wood floors and stairs

### **Wall repairs and plastering**

- Photos are provided in their evidence after tab 17 page 146 to show the size of the holes in the walls
- A list of hours worked by the male Landlord in October 2010 is provided after tab 13 page 75
- The receipt was for \$642.00 however they claimed \$184.80 for the downstairs bedroom and \$350.00 for around the house
- Item # 49 and 34,
- **\$534.80** for their claim as listed above for wall repairs and plastering

### **Painting**

- The Landlords testified they had painted the house two years earlier in 2008
- Their actual cost to have the house repainted is \$556.82 as every room in the entire house needed wall repairs or work (item 48)
- **\$300.00** for their claim as listed above for painting

### **Appliances**

- A new fridge and range were purchased
- The oven door was broken
- The hood fan over the stove and oven had grease and grime
- They calculated that there was 3 years remaining in the useful life of their appliances so they claimed the 20% depreciated value of \$250.00
- The fridge bins and brackets were broken and the Tenants used screws to drill into the inside wall of the fridge

- The bins were 7 years old. 53% of the new fridge cost of \$424.00 however they only claimed the cost for the inside parts of \$169.12.
- **\$419.12** for their claim as listed above for the appliances (Item 22, 46)

#### **Missing Items and Supplies**

- There were several possessions left inside the house by the Landlords during the tenancy that were missing after the Tenants vacated the property
- The Landlords did not have an inventory list that was approved by the Tenants at the beginning of the tenancy however some of the items being claimed are seen in photographs provided in their evidence.
- The missing items being claimed under this category are listed as item numbers 45, 47, 2, 3, 4, 5, 11, 20, 21, and 19 on the "summary of damages from tenancy" document.
- The Landlords stated they could not replace most of these items as many were unique. Of the items listed above numbers 4, 11, 19, 20, and 21 were replaced.
- **\$429.76** for their claim as listed above for the missing items and supplies

#### **Retile around Downstairs Bath Tub**

- The Landlords' evidence at tab 17, pages 135-138 and at tab 21 page 203 references their claim listed as item # 18 on their summary of damages document and displays the broken tiles around the bathtub
- Their receipt at tab 21 shows an amount of \$1,535.00
- **\$448.00** for their claim as listed above for the bath tub tile repairs

#### **Repairs to Threshold, Doors, and Desk Top, Front Gate Post**

- The Landlords are seeking \$336.00 for the Desk (item 33); \$56.00 for the front door threshold (item 28); and bathroom door repairs \$112.00 (item 14); front gate \$28.00 (item 35)
- **\$532.00** for their claim as listed above for repairs

#### **Repairs to Broken or Damaged Items**

- The Landlords' photos provided at tab 17 pages 126-130; 139; 144-146; and 149 represent some of the items being claimed.
- The amounts and item numbers for this section are as follows:  
#6 - \$39.00; #7-\$28.00; #8-\$112.00; #9-\$75.00; #13-\$60.00; #15 - \$55.98; #16-\$84.00; #23-\$112.00; #24-\$112.00; #25-\$112.00; #31-\$11.20; #43-\$25.00
- **\$826.18** for their claim as listed above for the repairs to broken or damaged items

#### **Septic Tank Repairs**

- The Landlords stated it was the Tenants who caused the septic system to back up and not the field
- The Landlord had the distribution box excavated as supported by their evidence at tab 13 pages 74 and 77
- Both contractors noted that paper was in the septic which was corrugated

- The Tenant was informed about this and denied putting this in the septic so the Landlords gave them the benefit of the doubt
- The items relating to this claim on the Landlords' spreadsheet are numbers 50, 38, 39, and 40
- **\$1,300.30** for their claim as listed above for the septic tank repairs

#### **Well Pump Replacement**

- The Landlords stated this pump was only two years old when it burnt out and the normal life is 10 years
- They believe the pump burnt out due to the Tenants' negligence of allowing a water leak from the outside hose pipe that was spraying up to 7' high
- The Landlords provided evidence at tab 13 pages 83 to 96 of receipts for the cost to replace the pump
- This is claimed at item number 51 on their list at \$2,374.57
- The Landlords advised their costs were much greater because they made improvements during the replacement
- **\$2,374.57** for their claim as listed above for the well pump replacement

#### **Machine Work**

- The Landlords state the Tenants dumped piles of dirt on the gravel driveway to create a garden
- It will take a machine about one hour to remove this dirt
- The Landlords confirmed this work has not been completed and it is an estimated cost listed at item # 41
- **\$112.00** for their claim as listed above for the machine work

#### **Cable and Satellite Dishes**

- The Landlords advised that there was fully functioning cable at the outset of the tenancy
- The Tenants did not have the Landlords' permission to remove the existing satellite dishes and wiring
- When the Tenants' new satellite dishes were installed there was no sealing done to where screws were drilled into the exterior of the house
- The Tenants had a dispute with the Landlords' service provider and now this service provider is no longer willing to provide service to the Landlords
- The Landlords allege the Tenants failed to pay the bill to the Tenants' new service provider and the Landlords are now allegedly being refused service from this new service provider
- The Landlords' claim is located at item #44 and is for resetting and rewiring for the pre-existing satellite dishes
- **\$200.00** for their claim as listed above for the appliances

#### **Fees for Filing their Application and Service of Documents**

- The Landlords seek costs for filing fees, service of documents, developing of photos and copying
- **\$300.00** for their claim as listed above for fees

**Loss of Rent**

- The Landlords are claiming two months loss of rent (2 x \$3,800.00) at item # 57
- The Landlord provided evidence at tab 13 page 97 to support the rental unit was not re-rented immediately following the Tenants end of tenancy
- **\$7,600.00** for their claim as listed above for the appliances

**Travel Costs**

- The Landlords did not reside on the island where their property was located and are seeking travel costs and time to attend the rental unit
- These amounts are claimed at item numbers 54 - \$600.00; 55 - \$ 354.00; and 56 - \$2,400.00
- **\$3,354.00** for their claim as listed above for travel costs

The Tenants' and their Advocate's response to the Landlords' claim is as follows:

- The Advocate stated the Landlords admitted in their own materials that claims for damages are extinguished if no move in or move out inspection reports are completed
- The Landlords did not provide receipts for a majority of the items being claimed
- It is up to the applicant to prove there has been a loss suffered and without receipts they cannot prove this
- How can they come up with \$1,803.42 for cleaning supplies alone which makes us question how they determined these amounts
- There is no evidence of when this alleged work was done and it is critical for the applicant to prove their claim and that they have actually suffered a loss
- The Landlords used speculative dates so this weakens their evidence
- The time to claim to retain a security deposit is 15 days
- The Landlords did not conduct a proper move in or move out inspection
- There are no exceptional circumstances here
- They believe the Landlord is only entitled to make claims for cleaning here and not for damages
- The Tenants stated they outlined as much as they could and they believe their evidence gives all the information needed to know their rebuttal as provided in their evidence
- They note that there may be a possible misunderstanding in their phrasing of "holidays" of when the Landlords left the country
- The Landlords never left a contact number for when they were out of the country
- No information for a local contact was provided to the Tenants for the period the Landlords were out of the country

- They would just email the address listed on their tenancy agreement to contact the Landlords, no phone number was ever provided
- The emergency preparedness envelope did not contain emergency contact numbers or names
- The Tenants stated they would not have dealt with the emergency issues had the Landlord arranged to have a representative there for them to contact while the Landlords were out of the country
- When the Landlords called the Tenants it would never show a number on their call display. It would always show unlisted or redirected numbers
- The telephone number listed on their application for dispute resolution for the Landlords is a very recent number that they only obtained since the Landlords returned to the country.
- The Landlords are claiming their unfinished repairs as damages such as the work around the bath tub
- They have no knowledge of the alleged missing items; there were no mutually agreed upon lists created of items left in and around the house by the Landlords, there was no move inspection either... the Tenants had created a list which is listed at tab 11 page 6 of their evidence
- The Landlords' photos are zoomed in and do not fairly represent the items
- The Tenants deny that their dogs chewed the Landlords' desk
- It is disturbing that the Landlord provided a photo of a hole in the wall where their "bull noses" were installed; where one was obviously removed to show the hole for their photos. This was not damage, these were wooden circles screwed into the wall for decoration and which the hand railing sat on.
- The Tenants contend that they left the house clean and undamaged
- As per their evidence at tab 13 pg 74 the Landlord was at the house showing potential tenants so if there was that much damage why did he not mention it at the time of the showings
- Potential tenants started coming by to view the property as of July 2010
- As per their evidence they provided a copy of the Landlords' internet advertisement dated October 4, 2010 which notes it is available as of October 15, 2010 so this displays that they had a good idea that the house was fine
- The Landlords have increased the rent in these on line advertisements, first they listed it at \$2,990.00 per month and then at \$3,000.00 per month
- If this damage truly existed how could the Landlords not see it
- If the Landlords went to the trouble of getting receipts for photos or other costs why would they not provide receipts for their other items being claimed
- The Landlords did not provide receipts with proper dates, no business names, did not provide official receipts and their costs being claimed are vague
- What proof did the Landlords provide that these items were actually paid for

- It is just allegations that this property was not rentable for three months
- There is no evidence of broken windows or gouges in the walls
- The Landlords constantly mentioned a dirty shower door and are claiming \$1,000 plus \$675 for cleaning on their spread sheet
- It was not until two months after we left that the Landlords provide a witness statement about the condition of the shower stall, why wait two months to clean it
- Their application shows a request for two months rent not three months rent
- The Tenants anticipated the Landlords would claim they damaged the septic so they provided the evidence at tab 5 page 6 which indicates it was "cement like sewage" which is not normal
- The problems were found to be in the distribution box at the second pumping which is further away from the house and would take years of neglect to accumulate
- The Landlords claim it was the Tenants neglect that caused the well pump to break because of the leak at the garden hose or pipe. They contend that this is a red herring. They confirm the hose pipe leaked but this did not cause the well pump to break down. They were told that there was an underground pipe that had burst which caused the well pump to burn out.
- The Tenants stated the burst water pipe was located under the pavement and it burst because it was not installed low enough underground.
- Everyone, including the Landlords were aware of the leaking hose pipe and the Landlords did not patch the leak properly
- There was no mention of damages to the well pump in the Landlords' October 8, 2010 letter of damages and no mention that the Tenants would be responsible
- In the Tenants' evidence at tab 13 page 56 the Landlord writes "I know this is not your fault" when speaking about the well pump breaking
- The Tenant read her closing statement and stated they are seeking fair compensation as they feel they honoured their tenancy agreement and left the rental unit clean and undamaged
- They questioned the Landlords testimony about the dates their photos were taken as they noted one of the outside pictures displays the veranda with a railing
- They contest the property is still not rented because it is in a remote area, is a specialized property with high rent for a narrow market as per the Landlords evidence; and that it is not due to damage to the unit
- The onus is on the Landlords to clear issues up with their Tenants and to provide peace and quiet – the Tenants were under the assumption that they rented the house and surrounding property
- The male Landlord would be in the house unannounced several times during the tenancy

- They feel the Landlords' claims are outrageous and that the Landlords have the responsibility to repair and maintain their property

Prior to closing remarks the Landlords' Advocate posted direct questions to the Tenants as listed below. This is the only time during the hearing process that direct questions were posted.

- The Landlord's Advocate questioned the Tenants as follows:
  - Q: Please tell me where the ground was soggy and when did you tell the Landlords that the ground was soggy.
  - The Tenants replied stating there was no soggy ground that they had noticed therefore they did not report anything to the Landlords. They had learned after the end of their tenancy that the Landlords' workers discovered a burst pipe that was underground. They did not notice or see any problems and it took experts to find the problem.
- The Advocate stated that while the Landlords claim against the security deposit is extinguished their claim for damages is not. Furthermore she argues the Landlords are not limited to 15 days to make a claim for damages
- The Advocate stated she is of the opinion that receipts are not required and that the Landlords need only to prove there are damages or loss as per section 7 of the *Residential Tenancy Act*
- The Landlords' Advocate turned her questions towards the Landlords and asked:
  - Q: Did the Tenants ever phone you?
  - A: Yes, several times.
  - Q: Did they have your phone number?
  - A: Yes
- The Advocate referenced the Residential Tenancy Policy Guideline # 3 in support of the Landlords' claim that the property was not rentable due to damage
- The Landlords advised the rental property has not been re-rented as of yet (June 9, 2011)
- The Landlords' Closing Remarks
- The repair work was too much to do
- The Landlord had personal issues to deal with so they had to stop work on the property
- They changed their request for loss of rent because they evaluated what was fair at the time and thought two months not three months was fair
- The Landlords confirmed there were no inspections. The Tenants said they would participate for a move out but then they walked away shortly after they started the inspection

- They advertised the property because they needed to re-rent it right away
- The Landlords pointed out that in the Tenants' own submission they admit to burning the counter with their toaster oven
- They refute the Tenants' statements that they do not know about the missing items as most of them were in the rental house at the outset of the tenancy and are displayed in the photos provided in their evidence at tab 14 page 103. These photos were taken in 2008.

### Analysis

11.4 of the *Residential Tenancy Branch Rules of Procedure* provides that If a party does not provide evidence in advance in accordance with Rule 3.1 [documents that must be served] and Rule 3.5 [evidence not filed with the Application for Dispute Resolution], that party must bring to the dispute resolution proceeding sufficient copies of that evidence for all of the parties and the Dispute Resolution Officer. The Dispute Resolution Officer will decide whether to accept this evidence in accordance with Rule 11.5 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

At the closing of the March 14, 2011 hearing and again on April 11, 2011 all participants were advised due to the expiration of the hearing time the hearing would be reconvened at a future date. Each party was instructed not to submit additional evidence. Neither party submitted additional evidence prior to the April 11, 2011 reconvened hearing.

It was during the April 11, 2011 reconvened hearing which the Tenant and Occupant presented the merits of their application, each Landlord provided testimony in response and I asked my clarifying questions. Both Landlords were provided an opportunity to present evidence in response to the Tenant's claim.

At the closing of the April 11, 2011 hearing the parties were instructed a second time that I would not accept additional evidence prior to the next reconvened hearing. They were also advised that the next time we convened the Landlords would be presenting the merits to their application, followed by the Tenants' response and cross examination, and each party's closing remarks.

During the two month period between April 11, 2011 and the reconvening on June 9, 2011, the Landlords hired an advocate, reworked their response to the Tenant's presentation of their claim and submitted volumes of additional evidence to the Tenants and the *Residential Tenancy Branch*, contrary to my previous instructions.

Each reconvened hearing does not constitute a new hearing; rather they are a continuation of the initial hearing. Therefore I hold to Rule 3.1 and Rule 4.1 of the *Residential Tenancy Branch Rules of Procedures* which stipulate evidence must be provided in advance of the hearing.

I find that to accept the additional late evidence from the Landlords would prejudice the other party and would result in a breach of the principles of natural justice because the Tenants would be deprived of the ability to spend 2 months reworking their response to the Landlords' presentation of their claim. Therefore I decline to consider the Landlords' additional late evidence and the female Landlord's oral presentation of that evidence, pursuant to Rule 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*.

The Landlord's have stated they could not view the DVD evidence which was provided in the Tenants' evidence. Therefore the photos on the DVD will not be considered in my decision pursuant to Rule 11.5 and Rule 11.8 of the *Residential Tenancy Branch Rules of Procedure*.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

### **Tenant's claim \$18,007.00**

The evidence supports the fixed term tenancy ended September 30, 2010 and the Tenants' forwarding address was sent to the Landlords via registered mail September 27, 2010. The Landlords are deemed to have received the forwarding address October 2, 2010, five days after it was mailed in accordance with section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposits, to the tenant with interest or make application for dispute resolution claiming against the security and pet deposits.

In this case the Landlords were required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than October 17, 2010. The Landlords did not file their application until February 25, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security and pet deposit. Therefore, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security and pet deposits (2 x \$1,600.00) + (2 x \$1,600.00) plus interest on security and pet deposits from August 5, 2008 to July 7, 2011 of \$19.74 for a total amount of **\$6,419.74**.

Section 33(1) of the *Act* provides that in this section, "**emergency repairs**" means repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing (i) major leaks in pipes or the roof, (ii) damaged or blocked water or sewer pipes or plumbing fixtures, (iii) the primary heating system, (iv) damaged or defective locks that give access to a rental unit, (v) the electrical systems, or (vi) in prescribed circumstances, a rental unit or residential property.

Based on the aforementioned I find the Tenants' claim for repairs to the hot water tank, water pump, and sewage system meet the definition of emergency repairs.

Section 33 (2) of the *Act* provides the landlord must post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

There is sufficient evidence to support the Tenants had email communications with the Landlords for the periods of September 2008 to December 19 2008 and again beginning May 2009 until the end of the tenancy. I note there is no evidence before me that supports there were communications between the parties, email or otherwise between the period of December 20, 2008 and April 24, 2009.

I accept the Tenants' evidence that the Landlords failed to provide a contact telephone number and that when the Landlords called the call display showed that the number was unlisted or redirected.

Based on the aforementioned I find the Landlords breached section 33(2) of the Act as they failed to provide the Tenants with an emergency contact name and telephone number.

The parties communicated via e-mail December 14, 2008 pertaining to the frozen hot water source, as supported by the Tenants' evidence where the male Landlord is providing directions where the Tenants can locate the hot water tank and suggestions on what may be causing the problems. I note that at no time did the Landlord offer to have someone attend the rental unit to conduct repairs, during this communication; rather I find it clear that the Landlord was expecting the Tenants to deal with the situation.

I accept the Landlords' evidence that he informed the Tenants, via e-mail, that a cable needed to be installed on the hot water tank and that when they offered to install it, the Landlord agreed. There is no evidence to support the Landlord followed up this communication to ensure the cable was installed. The Landlord did not provide written instructions to the Tenants for the required maintenance of the hot water tank or anything else pertaining to the rental property.

After careful consideration of the evidence before me I find that a reasonable person ought to have known that when providing such detailed information as to the maintenance or operation of mechanical equipment written instructions would need to be provided to ensure the instructions could be carried out as requested.

The Landlords admit that at the outset of the tenancy they felt the need to provide the Tenants an orientation on how to manage the property and that this orientation with several instructions was provided orally with no written instructions provided.

I do not accept the Landlords' submission that they were not previously informed of the requirement for repairs or the Tenants' requests for reimbursement for repairs that were paid for the hot water tank, water pump, and sewage pump. Rather the evidence provided by the Tenants supports their testimony that they had informed the Landlords via e-mail, when they had contact with them and that they provided the receipts to the female Landlord in May 2009 which was followed up by an e-mail requesting payment in December 2009.

Section 33(5) of the Act provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenants' evidence included a photo copy of a cheque in the amount of \$84.00 which was the payment to the plumber who attended to repair the hot water tank. I accept this evidence as a receipt of payment for services rendered by the plumber.

Based on the aforementioned I find the Tenants have met the burden of proof for the cost of emergency repairs (Hot Water Tank, Water Pump, and Sewage Pumped and Repaired) and I approve their claim in the amount of **\$1,307.00**.

The Tenants seek \$500.00 for the loss of internet and television service. The tenancy agreement does not provide for uninterrupted service of internet or television service. I find that a reasonable person ought to have known that living on an Island could cause minor interruptions in service of this nature. Therefore I find there to be insufficient evidence to support this claim is the result of the Landlords' breach, and I dismiss the claim of \$500.00, without leave to reapply.

I accept the evidence supports the Landlords used bleach to treat the pond water however there is insufficient evidence to prove the water was unpottable and I dismiss the Tenants' claim of \$2,880.00, without leave to reapply.

On October 11, 2008, the Tenants paid the Landlords \$36,800.00 as rent for the entire first year of their tenancy which was scheduled to begin on October 15, 2008, as per the tenancy agreement. It was after receiving this payment that the Landlords informed the Tenants that their occupation date would be delayed as the Landlords had not yet vacated the rental house. I accept the Tenants' claim that the Landlords over held the rental property in breach of the tenancy agreement and I approve their claim in the amount of **\$200.00**.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find it undeniable that the Tenants have suffered a loss of quiet enjoyment for approximately two months between October 16, 2008 and November 28, 2008; prior to the Landlords departure from the country; and again December 20, 2009 to mid April 2010; during the period the Landlords were determining the problems with the well pump. Therefore I find the Tenants suffered a loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the Landlords attended the rental unit during various times of the day and week and were inside or looking into the rental unit unannounced for short periods of time.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction of \$3,520.00, based on Section 27, they have provided no evidence indicating that the Landlords have breached section 27 of the *Act*, rather their evidence pertains to a breach of section 28 of the *Act* and they have included this claim and their evidence under the heading for loss of quiet enjoyment.

After careful consideration of the aforementioned and evidence I find the \$3,200.00 claimed for loss of privacy and the \$3,520.00 claimed for reduced rent meet the requirements for claims of loss of quiet enjoyment and aggravated damages. I find the Tenants are entitled to compensation in the amount of **\$4,400.00** pursuant to section 67 of the *Act*.

The Tenants have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Total amount awarded to the Tenants above: \$12,376.74

**Landlords' claim \$23,447.35**

Section 24 (2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (a) does not comply with section 23 (3) *[2 opportunities for inspection]*, (b) having complied with section 23 (3), does not participate on either occasion, or (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

This section prevents a landlord from a claim for damages against the security deposit however it does not prevent a landlord for making a claim against a tenant for damages.

The *Residential Tenancy Regulation # 21* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlords rely on statements obtained from real estate agents who viewed the property two months prior to the onset of the tenancy as their evidence to support the condition of the rental property at the onset of the tenancy. In support of the property condition at the end of the tenancy the Landlords rely on photos taken of the inside of the rental house.

A significant factor in my considerations is the credibility of the evidence. I am required to consider the Landlords' evidence not on the basis of whether it "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The evidence supports that in October 2010 the Landlords sent the Tenants a list of damage and loss totalling \$6,821.60 which was arbitrarily increased to \$23,447.35 in the Landlords application for dispute resolution which was filed four months after the Tenants made their application for dispute resolution in the amount of \$18,007.00.

In the absence of evidence to support the actual amount of loss and in considering the Landlords' evidence of the October 2010 list of claims totalling \$6,821.60, I find that on a balance of probabilities the Landlords simply altered their claim in a retaliatory fashion so it would be a higher amount than that being claimed by the Tenants. That being said,

the *Residential Tenancy Act* provides that claims can be made for damage or loss up to two years from the end of the tenancy; therefore the Landlords were at liberty to increase the amount they made their claim for. The Landlords are however still required to meet the burden of proof that these losses were suffered as a result of the tenancy.

The evidence supports the tenancy agreement provides that the Tenants were to maintain the property in its' current state. The Landlords allege they had verbal discussions and agreement from the Tenants as to what maintaining the property entailed.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In the absence of a move in inspection report or a preponderance of evidence which proves the condition of the exterior landscape of the rental property at the onset of the tenancy and without detailed written documentation of what was agreed to by the Tenants for maintenance of the property, I find there to be insufficient evidence to meet the burden of proof that the Tenants breached the Act, regulation or tenancy agreement by failing to maintain the property in its current state. Therefore I dismiss the Landlords' claim of \$1,139.20 for landscaping and machine work of \$112.00, without leave to reapply.

I accept the Landlords' evidence which was in the form of a notarized letter from a real estate agent that spoke to the condition of the rental house at the end of the tenancy. That being said, I accept this letter with caution given to the descriptive language used by the realtor as I am unclear of the relationship between the Landlords' and the realtor and the potential for ulterior motives on the part of the realtor. That being said, I accept that this letter indicates that the condition of the interior of the house was worse at the end of the tenancy when he saw the property in December 2010 from that when he first saw the property in August 2008, prior to the tenancy.

Section 32 of the *Act* provides (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After careful consideration of the aforementioned I find the Landlords have met the burden of proof that the Tenants breached sections 32 (1) and (2) of the Act. That being said, in the absence of a move in or move out inspection report and in the absence of copies of receipts proving the actual cost of the loss being claimed for the interior of the rental property, I find there to be insufficient evidence to meet the burden of proof for the amounts being claimed by the Landlords for cleaning (1,761.42), replacement of carpets (\$980.00), wood floor and stair repair (\$836.00), wall repairs and plastering (\$534.80), painting (\$300.00), and damage to appliances (\$419.12) totaling \$4,831.34.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there is insufficient evidence to prove the amount of the loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlords are entitled to nominal damages and award them the following: cleaning labour \$1,600.00 (2 x 40 hours x \$20.00 per hour), cleaning supplies \$25.00, carpets \$300.00, wood floor and stair repair \$160.00 (8 hours x \$20.00), wall repairs, plastering \$50.00, painting \$250.00, damage to appliances \$175.00 for a total amount of **\$2,560.00**. The balance of \$2,271.34 (\$4,831.34 – 2,560.00) is hereby dismissed without leave to reapply.

In the presence of the Tenants’ opposing evidence that the work to the tile around the bathtub was a renovation project; that damage to the threshold and doors were present at the outset; and that their dogs did not damage the desk top, I find there to be insufficient evidence to support the Landlords’ claim of loss. Therefore I dismiss the claims of \$448.00 for retiling and \$532.00 for repairs to the threshold, doors, and desk top, without leave to reapply.

In the absence of a move in inventory list or inspection report and after considering the Landlords did not fully vacate the house prior to the onset of the tenancy agreement, I find there to be insufficient evidence to support the amounts claimed by the Landlords for the alleged missing personal possessions (\$429.76) or for damages allegedly caused to their possessions (\$826.18); with the exception of the burnt kitchen countertop which is claimed at item 23 for the amount of \$112.00. Based on the aforementioned I dismiss the amount claimed of \$1,143.94 (\$429.76 + 826.18 – 112.00), without leave to reapply.

The evidence provided by the Tenants supports the Landlords’ claim that damage was caused to the kitchen countertop during the Tenants’ tenancy. I accept the amount

claimed to be a reasonable amount and I award the Landlords **\$112.00** for damage to the kitchen counter, pursuant to section 67 of the *Act*.

The Landlords seek \$1,300.30 for septic tank repairs and \$2,374.57 for the well pump replacement due to what they allege was the Tenants' negligence.

There is insufficient evidence to prove the septic tank had been regularly maintained prior to the tenancy and there is no evidence before me that supports it was the Tenants' actions that caused the septic to back up into the lower bathroom or to cause the septic pipe to burst. On the contrary the evidence provided by the Tenants supports the septic system and field had been neglected. The Landlords' testified they treated the pond water with bleach and their evidence page 76 further indicates problems in the septic tank were caused by the presence of "bleach or some other product had been killing the bacteria in the tank". Based on the aforementioned there is insufficient evidence to prove the septic tank, field, or septic line repairs were required due to the Tenants' negligence or breach, therefore I dismiss the Landlords' claim of \$1,300.30, without leave to reapply.

Furthermore the evidence supports that both parties were aware of water streaming from the garden hose pipe and neither party took action to properly repair this leak. There is insufficient evidence to support it was this garden hose pipe leak that caused the well pump to burn out. Rather, the Tenants provided evidence that it was later determined by the Landlords' contractors that a pipe under the concrete had burst which caused the pump to run continuously and burn out. I note that the Landlords did not refute this evidence.

Therefore in the presence of opposing testimony, I find there to be insufficient evidence to support the well pump burnt out as a result of the Tenants' negligence or breach and I hereby dismiss the Landlords' claim for the well pump repair of \$2,374.57, without leave to reapply.

The *Residential Tenancy Policy Guideline #1* provides that (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.

The Tenants admitted to removing the Landlords' satellite dishes and wiring from the rental house and installing a new satellite dish and wiring installed without the Landlords prior approval; and did not re-install the satellite dishes and wiring at the end of the tenancy. Based on the aforementioned I find the Landlords have met the burden of proof and I approve their claim of **\$200.00**.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

*A pecuniary allowance....Generally "costs" do not include fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*

In relation to travel fees (ferry, mileage, time \$3,354.00), and fees to compile and serve evidence (photocopying, photo development, postal \$200.00) I find that the Landlords have chosen to incur these costs that cannot be assumed by the Tenants.

Therefore, I find that the Landlords may not claim these fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. I therefore dismiss the Landlords' claim of \$3,554.00 (\$3,354.00 + \$200.00), without leave to reapply.

Having found above that the Tenants breached section 32 of the Act by leaving the rental unit in a worse state at the end of the tenancy I find the Landlords would not have been able to re-rent the unit immediately following the end of the tenancy. That being said I find there to be insufficient evidence to support it would take two months to restore the rental unit to a condition that it could be occupied. There is evidence which supports the Landlords did not act in a timely manner due to their own personal circumstances. I accept the Landlords may have been negotiating with a potential tenant however, I do not accept the evidence which suggests the Landlords had entered into a tenancy agreement with a new renter at \$3,800.00 as no signed agreement was provided in evidence. Based on the aforementioned, I find the Landlords have met the burden of proof to claim loss of rent for one month, in the amount of **\$3,200.00**. The balance of \$4,400.00 (\$7600.00 - \$3,200.00) loss of rent is dismissed without leave to reapply.

The Landlords have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Total amount awarded to the Landlords above: **\$6,122.00**

**Monetary Order** – I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

|  |                   |
|--|-------------------|
| Tenants' award                                 | \$12,376.74       |
| LESS: Landlords' award                         | -6122.00          |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b> | <b>\$6,254.74</b> |

### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$6,254.74**. This Order is legally binding and must be served upon the Landlords.

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 08, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: Enforcing a Monetary Order
- How and when to have a decision or order clarified or corrected:  
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)





# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 770356**  
**Additional File(s):763987**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**, Tenant(s),**  
Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Bowen Island, BC

Date of Hearing: March 14, 2011, April 11, 2011, June 9, 2011, by conference call.

Date of Decision: July 08, 2011

Attending:

For the Landlord:

s.22

Landlord  
Landlord

On June 9, 2011  
for the Landlords

s.22

attended as Legal Advocate

For the Tenant:

s.22

Tenant  
, Occupant  
Advocate for the Tenants

s.22

## **DECISION**

**Dispute Codes**      O MNSD MNDC MND FF  
                             MNR MNDC MNSD FF

### **Preliminary Issues**

Each person who attended the dispute resolution teleconference hearing and subsequent reconvened hearings were given an opportunity to present their arguments and/or testimony with the exception of the Tenants' witness who appeared at the teleconference hearing on March 14, 2011.

After careful consideration of the volume of evidence before me and the amount of testimony that was anticipated for both applications I ordered all witness testimony to be submitted and received by me and the opposing party, in writing, no later than March 25, 2011, pursuant to Rules 11.11, 3.1, 4.1, and 8.5 of the *Residential Tenancy Branch Rules of Procedure*.

I note that the male person named as the applicant in the claim filed against the Tenants and who is named as one of the respondent Landlords in the Tenants' application for dispute resolution is not named as a landlord in the written fixed term tenancy agreement. The female who is named as the Landlord on the fixed term tenancy agreement and as a respondent Landlord on the Tenant's application for dispute resolution is not named in the Landlord's application for dispute resolution as a Landlord. The male testified that both he and his wife are owners of the rental property. Both the male and female listed as Landlords in attendance for this dispute were in attendance at the teleconference hearing and each subsequent reconvened hearing.

**As per Section 1 of the Act a "landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Applying the above definition, I find that the two Owners are proper parties to this proceeding. Therefore I amended the style of cause for these applications to include both the male and female Landlords' name pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

The person who attended with the Tenant and is named as an Occupant in attendance for this dispute is the Tenant's s.22 who lived at the rental property with the Tenant for the duration of this tenancy. It is not uncommon for adult children to reside with their parents and not be listed as a tenant as the parent is paying the rent. That being said and pursuant to section 8.3 of the *Residential Tenancy Branch Rules of Procedure*, I allowed the Occupant to attend the hearings and provide testimony as s.22 resided at the rental unit for the duration of the tenancy, assisted s.22 in putting their evidence together, and was attending as support for s.22 the Tenant.

### Introduction

This dispute dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants and were heard by teleconference hearing on March 14, 2011 for one hour, and reconvened on April 11, 2011 for three hours and ten minutes, and June 9, 2011 for three hours and five minutes.

The Landlords filed seeking a Monetary Order for damage to the unit site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and security deposit, to recover the cost of the filing fee from the Tenants for this application, and for other reasons which they described in the details of their dispute on the application as "respondents damaged the residence making it unable to rent for 3 months in addition to cost of damages – respondents did not fulfill their obligations in regarding maintenance as per lease agreement [sic].

The Tenants filed seeking a Monetary Order for the cost of emergency repairs, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, return of double their pet and security deposit, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of hearing documents and the volumes of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Landlords appeared at the first two hearings without the assistance of a legal advocate (Landlord's Advocate) who attended the June 9, 2011 hearing. At the outset of the June 9, 2011 reconvened hearing the Landlords' Advocate introduced herself.

After stating her name she said s.22 I am here as the Landlords' advocate. s.22

s.22 I would like to know what Rule of Procedure you used to state no additional evidence would be accepted?"

I informed the Landlord's Advocate that I would not use valuable hearing time to argue my interpretation of the *Residential Tenancy Act*, Regulation, Rules of Procedure, or any other law with her. I explained that she was at liberty to ask me questions which I would document and respond to in my written decision. I note that no further questions were put forward by the Landlords' Advocate and the answer to her question about evidence is listed below in my analysis.

#### Issue(s) to be Decided

1. Have the Tenants met the burden of proof to be entitled to reimbursement of the cost of emergency repairs they had completed to the rental property?
2. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, have the Tenants met the burden of proof to be awarded monetary compensation as a result of that breach?
4. Have the Tenants met the burden of proof to be awarded the return of double their security deposit?
5. Have the Landlords met the requirements of the *Residential Tenancy Act* to be entitled to keep the security and pet deposits?
6. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

7. If so, have the Landlords met the burden of proof to be awarded monetary compensation as a result of that breach?

### Background and Evidence

The *Residential Tenancy Branch Rules of Procedure # 11.2* provides that a party must present only evidence that is relevant to the application being heard. Over the course of the seven hours and 15 minutes of the teleconference hearing volumes of evidence was presented, some of which was not relevant. Following is a summary of the relevant evidence.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement which began October 15, 2008 and ended September 30, 2010. Rent was payable on the first of each month in the amount of \$3,200.00. On August 5, 2008 the Tenants paid \$1,600.00 as the security deposit and \$1,600.00 as the pet deposit.

The Landlords testified they were not able to open the DVD of photos provided by the Tenants as evidence. Then they advised that their application and monetary amounts claimed are estimates based on their educated guess.

Due to the volume of relevant information provided in the testimony I have chosen to list the information in point form under each main category of compensation being claimed as follows:

### **Tenants' Claim**

#### **1) \$6,400.00 Return of Double the Security and Pet Deposits**

- On September 27, 2010 a registered letter was sent to the Landlords with the Tenants' forwarding address, requesting a move out inspection, and a request for the return of their security and pet deposits
- As of the hearing, March 14, 2011 the deposits have not been returned to the Tenants
- The Tenants attended the move out walk through however the Landlords never completed a formal report and nothing was signed
- The Tenants stated they left the rental property in clean, undamaged condition.
- Two witnesses attended on October 1, 2010 at 2:00 p.m. and provided written statements as to the condition of the rental property, provided in the Tenants' evidence
- They provided numerous photos in their evidence which support the condition of the unit

- The Landlords did not file a claim to keep the security and pet deposits until more than three months after the Tenants filed their claim for dispute resolution
- The Landlords provided a walk through orientation however no walk through inspection was completed and no forms were completed at the beginning or the end of the tenancy

**2) \$1,307.00 Emergency Repairs**

- The Tenants stated they were led to believe that inside the envelope marked “emergency preparedness” that there would be emergency contact numbers inside, there were not
- The Landlords left to go out of the country November 27, 2008. The female Landlord returned in May 2009 and the male Landlord returned August or September 2009.

- There was no Landlord or emergency contact around to make the decisions

- **2(A)\$84.00 Hot Water Tank**

- They had no hot water as of December 13, 2008; they had problems locating the hot water tank when they later found out that it was outside.
- They called a plumber and were told the hot water tank needed to be insulated and it cost \$84.00. This was no fault of theirs as the hot water tank was outside and it was a cold winter

- **2(B)\$978.00 Water Pump**

- When they had no hot water on December 13, 2008 they noticed a leak in the water pump and asked the plumber to check it out.
- The plumber also found a leak coming from the bath tub.
- They were instructed by the Landlord during their orientation to watch the water pump to make sure there were no water leaks
- The plumber advised the water pump was going to break down, they told the male Landlord who said the plumber was wrong and told them to tighten up the connections and to keep it warm
- January 27, 2009 the water pump seized. There was no communication with the Landlord at this time as they could not reach him on Skype so they had no water for 4 or 5 days
- The plumber told them the water pump could not be fixed so they paid to have a new water pump purchased and installed
- It was not until after the new pump was installed that the male Landlord claimed there was warranty on the old water pump
- They gave copies of the invoices for \$84.00 and \$978.00 from the plumber to the female Landlord in May 2009 when she returned to the country and did an inspection. It was during this inspection that they showed her the water leak in the outside garden hose and there was no response

- **2(C)\$245.00 Sewage pumped and Repaired**

- The sewage pump issue began in August 2009 when the sewage backed up into the downstairs bathtub and toilets
- They were told by the male Landlord at the outset that the septic tank was pumped out just before they were beginning their tenancy
- A snake was used as they thought it was simply plugged
- They ended up having to hire a plumber who determined that the main sewage pipe that ran from the house to the tank, up to about thirty feet, burst because the solids from the tank were backing up towards the house
- On August 26, 2009 they paid \$245.70 to have the pipe fixed
- The male Landlord returned to the country and they discuss all of these issues. The Tenants request that the Landlords pump out the septic tank. The male Landlord tells the Tenants to have it pumped out and they will pay them for it. The tank was pumped September 3, 2009 for a cost of \$438.37 and the Landlord did reimburse them.
- They were only in the house for eight months at the time the tank was first pumped yet as per their evidence the tank had not been pumped in years. They were told by the plumber that this is the worst issue he had ever seen and that pumping out the tank was only a temporary fix. The plumber stated that the field and tank had been neglected for years, as supported by the plumber's letter provided in tab 5 of the Tenants' evidence.
- The Tenants stated they were left with having to deal with this septic issue which involved cleaning up a lot of mess and the inconvenience of arranging to have the work completed.
- They were tired of not getting a response to their requests for reimbursement from the Landlords so they sent a firm email in December 2009 requesting the payment

**3) \$10,300.00 for Damage or Loss**

**3(A) \$500.00 for Loss of Internet and Television Service**

- They had a verbal discussion with the Landlord at the outset of the tenancy where they explained that internet service was mandatory
- Their evidence included a copy of the advertisement placed by the Landlord to rent the property which is located after tab 9. The advertisement lists telephone, internet , and television
- They were told by the Landlords the name of the service provider so they signed up with them for one year. The service was great for six months and then it became intermittent and riddled with problems.
- They had the service provider come out and inspect the property and they were told that the cable was not hooked up properly and it was an exposed line which is negatively affected by the winter weather
- They kept telling the male Landlord of the problems but he just never said a word

- Had they known of the problems with the service at the outset they would have had satellite from the beginning.
- There were satellite dishes at the property but the Landlords did not offer them for their use
- The Tenants spent over \$1,000.00 to have a new satellite dish hooked up with a different service provider
- The service provider owns the dish so when they moved out it was left at the rental unit

**3(B) \$2,880.00 for Unpotable Water from December 2009 to April 2010**

- During Christmas 2009 the water began to smell murky like lagoon or pond water and it appeared to have dirt in it
- The water stopped completely and then came back on again
- They had to boil their drinking water and did laundry and took showers elsewhere
- They e-mailed the Landlords to ask what was going on and if this water was safe
- The Landlord responded and never told the Tenants that the well had broken down and he had switched over to a pond with fish in it to provide their water
- The male Landlord was at the property often during this period to adjust the water pump and put filters on to accommodate the pond water. Then the pump got sluggish and stopped all together.
- When they complained to the Landlord he told them to buy themselves better filters at which time he told them it would be fixed in a few weeks
- The Tenants said this situation was a nightmare as they had arguments with the Landlords verbally and via emails about how their contract provides for potable water.
- The copy of the e-mail between them and the Landlord which is located on page 56 of their evidence supports that they were not informed of the well breaking in December 2009 until March 27, 2010. The well was not repaired and up and running again until early April 2010.
- The male Landlord was constantly on the property so we kept thinking he would fix it and before we knew it 4 ½ months had gone by.
- They had contacted the *Residential Tenancy Branch* and were told to work through this with the Landlord in a methodical way and make a claim later; which is what they did
- They continued to buy bottled water and went to family and friends to do laundry and shower

**3(C) \$6,920.00 for Loss of Quiet Enjoyment**

- 3(C)(i) \$200.00 for Move in Date delayed
- Their tenancy agreement was to begin October 15, 2008 and they had arranged movers for that date

- The date was delayed until October 17, 2008 by the Landlords and when they arrived the Landlords still had many of their possessions inside the house
- They are seeking \$100.00 for their inconvenience for each day they were delayed
- 3(C)(ii) **\$3,200.00** Loss of Privacy due to Landlords Attendance at Property
- They are seeking the return of rent from October 17 to November 28, 2008 as the Landlords left furniture and their bird in a bird cage inside the house
- The male Landlord continued to enter the house without their permission or prior notice
- The Landlords left boxes of possessions outside
- The Landlords were building a storage building on the property which provided a constant echo of saws, hammering, talking, and cars driving by
- The Landlords blocked their driveway with equipment and would drive his ATV up to the house to pick up tools
- On two separate occasions the male Landlord entered the house, without notice, and startled the Occupant, who at one time was in her night clothes
- The Occupant stated the male Landlord told her she would have to bear with it until they were gone out of the country
- The male Landlord would also show up to fix things around the property without notice and would show up intermittently as it fit into his schedule
- 3(C)(iii) **\$3,520.00** Reduced Rent
- They are seeking reduced rent equal to 5% (\$160.00 for each of the 22 months of their tenancy) for the following:
- Having to deal with equipment constantly breaking that was due to no fault of their own
- Being told mistruths that everything was new and in pristine condition
- The solar panels on the roof never worked
- The roof leaked and they had problems with the water, septic, and internet
- They provided copies of the Landlords' new advertisement where they are saying everything is all good again
- They ended up feeling insecure as their patience ran out
- They felt the male Landlord's attitude towards them was a problem as he ignored them, called them whiners, told them this is country life, and he questioned why they could not handle it
- They paid their rent and did not get their quiet enjoyment when the Landlord returned after 9 months of being out of the country as he caused unreasonable disturbances, he was always around, he would open doors without knocking and no notice was provided when he would be there
- He would tell them he was coming to his storage shed or the circle but 15 minutes later he would be at the front door and would open the door or look

inside the house through the windows. The front of the house is all windows so he could see everything inside

- There was no reason for him to be at the door and his appearances were random which caused a constant low grade nervousness
- Often he would not come to the property on the day he listed in his e-mails and then would just show up some other day unannounced
- When the Landlords would not leave or be restricted from entering all "hell would break loose" because they would become offended
- If they asked nicely for advance notice the Landlord would send e-mails stating things like "you want to play by the book" which indicates to them that the Landlords were offended.
- The Landlords would later become confrontational with them.

The Landlords provided the following response to the Tenants' submission during the April 11, 2011 hearing:

**1) \$6,400.00 Double the Return of Security and Pet Deposits**

- The Landlords confirmed they do not have an Order from the Residential Tenancy Branch authorizing them to keep the security deposit
- The Landlords do not have the Tenants' written permission to keep the security deposit
- They made no applications for dispute resolution to keep the security and pet deposits until they filed their application on February 25, 2011.
- There were a few attempts to conduct a move out inspection as supported by the copies of emails provided on pages 57 and 58 of their evidence. The Landlords attended October 1, 2010 and left because the rental property was not cleaned up. They attended again on October 2, 2010.
- No final notice of inspection was issued and no move out inspection report was completed or signed by both parties.
- Rent was paid in full up to September 30, 2010.
- The Landlords state the Tenants refused to attend the move out inspection as supported by the e-mail found in their evidence after tab 11 page 58

**2) \$1,307.00 Emergency Repairs**

- **2(A)\$84.00 Hot Water Tank**
- They provided the Tenants with an orientation of the property at the outset of the tenancy at which time they told the Tenants verbally that they need to install a cable to the hot water tank before the winter arrived
- The instructions how to install the hot water tank cable were provided verbally and no written instructions or notes were provided to the Tenants

- The male Landlord referenced an e-mail provided in the Tenants' evidence on page 45 where he indicates that he needed to install the cable
- He questions the evidence provided by the plumber as the hot water tank did not freeze it was the water line that froze
- He referred to his evidence which displays that the outside temperature went below freezing (tab 4 pages 21 & 22)
- This hot water tank has no tank so the plumber's evidence is wrong
- The Landlords stated they are faced with having to defend themselves to items the Tenants never requested before as noted in the email they provided in their evidence (tab 4 page 29)
- They contend that all of the Tenants' emails were answered and they were never presented with a bill until they made this claim. They never have received a copy of the \$84.00 bill only a copy of a cheque
- **2(B)\$978.00 Water Pump**
- The Tenants said their plumber said the water pump froze however the pump is located inside the laundry room that has a heater, so if it froze it was due to the Tenants' negligence
- Their water pump was not an old pump; it was recently new, about two years old.
- The Landlords did not provide evidence as to the age of the water pump and never thought to bother looking for it
- The Landlords are of the opinion that the water pump broke because it froze
- They argued that they never saw the broken pump, they never saw an invoice, the Tenants never asked to be reimbursed until now, they never brought the issue up with the Landlords prior to making their application for dispute resolution.
- The Landlords confirmed they saw the new water pump during one of their inspections of the property but never questioned the Tenants about it
- The Landlords stated they did not remember how they heard about the problems with the water pump
- The Landlords stated they were not given an opportunity to participate in the repair and they suggest that it broke on the same day as the hot water tank
- **2(C)\$245.00 Sewage pump**
- The Landlords advised the septic tank backed up on August 29, 2009 and the only bill that was presented to the Landlords was for the pumping out of the tank which they reimbursed the Tenants for.
- The Landlords claim the problems were caused by the Tenants putting improper products into the septic as they had had it pumped out prior to the tenancy
- The Landlords advised they do not have proof that the septic was pumped out prior to the tenancy

- The Landlords stated they were not given notice that the sewage pipe was broken and the first time they saw the bill for this repair was two years later

**3) \$10,300.00 for Damage or Loss**

**3(A) \$500.00 for Loss of Internet and Television Service**

- The Tenants never contacted the Landlords about their decision to have satellite installed
- The Landlords stated this information was all new to them when they read the Tenants claim
- Their internet provider served them for over 15 years and their next door neighbour said they have never had any problems
- They reference an e-mail they provided in evidence (tab 7) where the male Landlord wrote to the Tenants how their service has been fine for over 20 years and now their service provider has stopped providing them with service.
- There were two existing satellite dishes that were previously installed at the house that the Tenants disconnected and left all the wires and dishes behind

**3(B) \$2,880.00 for Unpottable Water from December 2009 to April 2010**

- The male Landlord confirmed the water smelled like chlorine because he was treating the pond water with bleach
- This pond water is fed into a holding tank by gravity
- The Landlords stated there was an underground water line that fills the water holding tank, by gravity, and then an automatic valve to keep the tank full
- The pond feeds into the tank in an emergency or if switched manually
- The Landlords confirmed their well is shared with the neighbouring property and that the deep well pump was only four years old. They did not provide evidence as to the age of this well pump
- The Landlords received an email from their neighbour advising of a problem with the well pump and states that there was an 8ft water spray coming from the Tenants' outside hose
- The Landlord referenced an email dated May 3, 2009 at tab 9 in his evidence where the neighbour informs the Landlords of the water spraying from the Tenants' hose; the Tenants told him the water spray was fixed
- They had previously instructed the Tenants to keep the outside hose closed however the plumber opened the hose which caused a huge leak which the Landlords state was the cause the deep well pump broke
- The Landlords stated the Tenants allowed this water to continue to leak from May 3, 2009 to January 2010 which caused their deep well to burn out
- The Landlords confirmed they did not know if the Tenants used this hose intermittently or not and they did not supply documentary evidence to prove what caused the water pump to burn out
- The male Landlord advised that he does most of the repair work himself

- The Landlords did not provide the Tenants with notice that they were changing the water supply from well water over to pond water
- The male Landlord told the male Tenant in January of a problem with the well however there was never a loss of water to the house
- The Landlord claims it was a process of elimination to determine the problem with the well. He saw the water pump did not have enough pressure to fill the tank; he waited for parts and good weather to be able to install the new pump
- The Landlord confirmed his neighbour paid 50% of the cost of the repair
- The Landlords kept providing water even though it was pond water
- He agreed the water was brown with the rain and run off however he chlorinated the water with bleach after he tested it and measured the required amount of bleach required.

**3(C) \$6,920.00 for Loss of Quiet Enjoyment**

- 3(C)(i) \$200.00 for Move in Date delayed
- The Landlords confirmed they were late in moving out of the house
- They contend they were out by October 16, 2008 and not October 17, 2008 as claimed by the Tenants
- The Tenants were not given the keys to move into the rental unit until October 16, 2008 even though the contract says start of the tenancy was October 15, 2008
- The Landlords stated they spent October 17, 2008 in a hotel but did not provide evidence to support this
- The Landlords confirmed they still had possessions inside and outside the rental unit and originally the Landlords property was to be stored in one side of the carport. they later verbally agreed to allow the Tenants to have both sides of the carport
- They stated the Tenants initially requested to keep some of the Landlords' furniture and the Landlords' bird inside the house and later changed their mind so the Landlords removed those items
- They worked through things as a trade off
- 3(C)(ii) \$3,200.00 Loss of Privacy due to Landlords Attendance at Property
- The Landlords pointed out section 3(b) of their lease which is found after tab 2 page 14 of their evidence which states that the Tenants have non-exclusive use of the property
- 3(C)(iii) \$3,520.00 Reduced Rent
- First the Tenants say we are not accessible so they have to do the repairs and then they say we are there all of the time never giving them their privacy
- The male Landlord said the Tenants' testimony is all false
- He confirms he was building a storage shed and working on the shed roof 700 feet away from the house but he never disturbed them

- The Landlord referenced an e-mail dated June 17, 2009, (tab 8 of their evidence) where the Tenants wrote them to advise everything was working great and they had no problems
- They did not constantly inspect the house and only did one house inspection as supported by the e-mail provided in their evidence after tab 8 on page 38

At this point the hearing time allotted for this reconvened hearing (April 11, 2011) was about to expire. I instructed all parties that we would reconvene for one final hearing and they would be notified in writing of the final reconvened hearing date and time. The parties were advised that no additional evidence would be accepted by either party and we would begin the next hearing with the Landlords presenting the merits of their application followed by the Tenants' response and closing remarks.

At the outset of the June 9, 2011 hearing I explained I would not be accepting the additional evidence provided by the Landlords as I had previously instructed all parties not to send additional evidence. The Landlords responded by claiming I did not allow the female Landlord an opportunity in the previous hearing to provide testimony in response to the Tenants' claim. The Landlords stated they felt I was not able to understand the male Landlord through his accent. I reminded the Landlords how I encouraged the female Landlord to provide testimony during the April 11, 2011 reconvened hearing and I repeated several pieces of testimony provided by the female Landlord. I also pointed out I had no problems understanding the male Landlord. The Landlords acknowledged this and apologized.

I then turned the floor over to the Landlords to begin presenting their submission at which time the female Landlord proceeded to read an eleven page submission which was created after the April 11, 2011 reconvened hearing and was a reconstruction of their response to the Tenants' claim that they had provided in the April 11, 2011 reconvened hearing.

The Floor was then turned to the Tenants for their response. The Tenants' Advocate submitted the following:

- He agreed that the law of equity should be applied if possible for residential tenancy matters
- His reading of the law is that the Dispute Resolution Officer does not have discretion to refuse payment of double the security and pet deposits as it states double payment "must" be made
- He is of the opinion that a Dispute Resolution Officer has the ability to refuse evidence based on their discretion

- The Tenants made requests and attempts to have their deposits returned, they did not walk away from their deposits as alleged in the Landlord's reconstructed submission
- It is the Tenants' right to apply for these claims
- Exceptional circumstances as quoted in the Landlords' reconstructed submission do not apply here, the Landlords simply made no effort to apply to keep the deposits
- The references to claims made for damages should be ignored as the Landlords' extinguished their rights to claim against the deposits when they failed to conduct a move in inspection and complete the report
- He agrees that the Landlords may be able to claim for cleaning
- In response to the e-mail the Landlords' provided in evidence at page 58 relates to a contentious issue at the time of move out yet they have phrased it in a neutral manner. The first line is very clear when they write "in all honesty". He contends this could not be clearer going into a conflict. There was no conciliatory note to it and the Landlords sounded very threatening. The Tenants did not want to respond to this so they gave the Landlords time to respond and return their deposits.

The Occupant testified and questioned the Landlords' claim of extraordinary circumstances. The Tenants sent their registered letter requesting their deposits. The Landlords sent them a report October 8, 2010 listing damages of \$6,821.60 and then the Landlords wait until February 25, 2011 to make their application, more than 3 months after the Tenants file their application on November 8, 2010. She wondered how the Landlords' delay would be extraordinary circumstances.

The Landlords' Advocate submitted that the *Kikals* decision is clear with respect to doubling deposits and that it is not the amount of time that is at issue. She continued by arguing that the Landlords were estopped by the Tenants when the Tenants failed to respond to the Landlords' report.

### **Landlords' Claim**

The Landlords referenced a two page spreadsheet titled "summary of damage from tenancy" which they provided in their original evidence at tab 13 and totals \$23,447.35 for their claim. This spreadsheet was referenced during the Landlords' testimony while presenting the merits of their claim.

- The Landlords read sections 32(2) and 32(4) of the *Act*, and from Policy Guideline #1.

- They confirmed their claim represents estimated costs and that the actual costs are above what they have claimed.
- They stated that at the onset of the tenancy the house was newly painted and the floors were freshly varnished, they did not provide evidence to support this work was completed.
- They had a new hot water heater installed prior to the tenancy

### **Landscaping**

- They had beautiful flower beds, lawn and patio
- They had realtors attend in August 2008 as supported by the email they provided in evidence at tab 11 page 53 and a letter at tab 11 pages 64-65
- A copy of the property appraisal is provided at tab 11 pages 48-52
- They state the Tenants agreed to pay their rent one year in advance because the property was in good condition
- The Tenants assured the Landlords they would take care of keeping the lawns and gardens maintained however they were not maintaining the grass and did not attend to the flower planters or flower beds that were near the house
- At the end of the tenancy the Landlords stated they found the planters were all emptied into the flower beds overtop of ashes from the fireplace
- All of the perennial plants were gone and they should have lasted about ten years
- A landscape quote was provided at tab 21 pages 189-190 in the evidence provided after the April 11, 2011 reconvened hearing (referred to as "late evidence" for the remainder of this decision).
- The Landlord had claimed \$179.20 to refill and replant the half barrels.
- Item #'s 37, 58, 59
- **\$1,139.20** for their claim as listed above for landscaping

### **Cleaning**

- Landlords seek \$25.00 per hour plus HST as quoted
- They claim the inside of the house required extensive cleaning at the end of the tenancy
- The shower stall door required extra cleaning with a corrosive cleaner to be able to remove the scum. Photos were provided after tab 16 pages 110- 125 and tab 17 page 174.
- Receipts were provided in the late evidence after tab 21 in support of the costs for cleaning supplies, kitchen cleaning \$42.00, shower door cleaning \$28.00, white sofa, \$150.00, clean up after mice droppings \$56.00, mice traps, clean out the gutters, pressure wash the outside of the house, and overall house cleaning of 40 hours.
- Item #'s 1, 12, 27, 29, 30, 36, 42, 52, 53
- **\$1,761.42** for their claim as listed above for cleaning

### **Carpets**

- The Landlords claim they had to replace the carpets because the Tenants' dogs soiled them repeatedly
- They know the dogs soiled repeatedly because they saw stains on the underlay and the wooden subfloor when they removed the carpets
- The carpets were 7 years old and there were 5.70 square feet for at total of \$1,995.00. After considering the depreciated value they are seeking partial payment
- A receipt was provided in the late evidence after tab 21
- **\$980.00** for their claim as listed above for carpets (item 32)

### **Wood Floors and Stairs**

- The floors on the main level had to be refinished and were only 10 years old
- The upstairs floors were spot refinished and were new
- The damage is referenced in their photos found after tab 13 and claimed at items #10, 17, 26
- The wood floor refinishing was completed by the Landlords at the end of October 2010 so there are no receipts to provide
- **\$836.00** for their claim as listed above for wood floors and stairs

### **Wall repairs and plastering**

- Photos are provided in their evidence after tab 17 page 146 to show the size of the holes in the walls
- A list of hours worked by the male Landlord in October 2010 is provided after tab 13 page 75
- The receipt was for \$642.00 however they claimed \$184.80 for the downstairs bedroom and \$350.00 for around the house
- Item # 49 and 34,
- **\$534.80** for their claim as listed above for wall repairs and plastering

### **Painting**

- The Landlords testified they had painted the house two years earlier in 2008
- Their actual cost to have the house repainted is \$556.82 as every room in the entire house needed wall repairs or work (item 48)
- **\$300.00** for their claim as listed above for painting

### **Appliances**

- A new fridge and range were purchased
- The oven door was broken
- The hood fan over the stove and oven had grease and grime
- They calculated that there was 3 years remaining in the useful life of their appliances so they claimed the 20% depreciated value of \$250.00
- The fridge bins and brackets were broken and the Tenants used screws to drill into the inside wall of the fridge

- The bins were 7 years old. 53% of the new fridge cost of \$424.00 however they only claimed the cost for the inside parts of \$169.12.
- **\$419.12** for their claim as listed above for the appliances (Item 22, 46)

#### **Missing Items and Supplies**

- There were several possessions left inside the house by the Landlords during the tenancy that were missing after the Tenants vacated the property
- The Landlords did not have an inventory list that was approved by the Tenants at the beginning of the tenancy however some of the items being claimed are seen in photographs provided in their evidence.
- The missing items being claimed under this category are listed as item numbers 45, 47, 2, 3, 4, 5, 11, 20, 21, and 19 on the "summary of damages from tenancy" document.
- The Landlords stated they could not replace most of these items as many were unique. Of the items listed above numbers 4, 11, 19, 20, and 21 were replaced.
- **\$429.76** for their claim as listed above for the missing items and supplies

#### **Retile around Downstairs Bath Tub**

- The Landlords' evidence at tab 17, pages 135-138 and at tab 21 page 203 references their claim listed as item # 18 on their summary of damages document and displays the broken tiles around the bathtub
- Their receipt at tab 21 shows an amount of \$1,535.00
- **\$448.00** for their claim as listed above for the bath tub tile repairs

#### **Repairs to Threshold, Doors, and Desk Top, Front Gate Post**

- The Landlords are seeking \$336.00 for the Desk (item 33); \$56.00 for the front door threshold (item 28); and bathroom door repairs \$112.00 (item 14); front gate \$28.00 (item 35)
- **\$532.00** for their claim as listed above for repairs

#### **Repairs to Broken or Damaged Items**

- The Landlords' photos provided at tab 17 pages 126-130; 139; 144-146; and 149 represent some of the items being claimed.
- The amounts and item numbers for this section are as follows:  
#6 - \$39.00; #7-\$28.00; #8-\$112.00; #9-\$75.00; #13-\$60.00; #15 - \$55.98; #16-\$84.00; #23-\$112.00; #24-\$112.00; #25-\$112.00; #31-\$11.20; #43-\$25.00
- **\$826.18** for their claim as listed above for the repairs to broken or damaged items

#### **Septic Tank Repairs**

- The Landlords stated it was the Tenants who caused the septic system to back up and not the field
- The Landlord had the distribution box excavated as supported by their evidence at tab 13 pages 74 and 77
- Both contractors noted that paper was in the septic which was corrugated

- The Tenant was informed about this and denied putting this in the septic so the Landlords gave them the benefit of the doubt
- The items relating to this claim on the Landlords' spreadsheet are numbers 50, 38, 39, and 40
- **\$1,300.30** for their claim as listed above for the septic tank repairs

#### **Well Pump Replacement**

- The Landlords stated this pump was only two years old when it burnt out and the normal life is 10 years
- They believe the pump burnt out due to the Tenants' negligence of allowing a water leak from the outside hose pipe that was spraying up to 7' high
- The Landlords provided evidence at tab 13 pages 83 to 96 of receipts for the cost to replace the pump
- This is claimed at item number 51 on their list at \$2,374.57
- The Landlords advised their costs were much greater because they made improvements during the replacement
- **\$2,374.57** for their claim as listed above for the well pump replacement

#### **Machine Work**

- The Landlords state the Tenants dumped piles of dirt on the gravel driveway to create a garden
- It will take a machine about one hour to remove this dirt
- The Landlords confirmed this work has not been completed and it is an estimated cost listed at item # 41
- **\$112.00** for their claim as listed above for the machine work

#### **Cable and Satellite Dishes**

- The Landlords advised that there was fully functioning cable at the outset of the tenancy
- The Tenants did not have the Landlords' permission to remove the existing satellite dishes and wiring
- When the Tenants' new satellite dishes were installed there was no sealing done to where screws were drilled into the exterior of the house
- The Tenants had a dispute with the Landlords' service provider and now this service provider is no longer willing to provide service to the Landlords
- The Landlords allege the Tenants failed to pay the bill to the Tenants' new service provider and the Landlords are now allegedly being refused service from this new service provider
- The Landlords' claim is located at item #44 and is for resetting and rewiring for the pre-existing satellite dishes
- **\$200.00** for their claim as listed above for the appliances

#### **Fees for Filing their Application and Service of Documents**

- The Landlords seek costs for filing fees, service of documents, developing of photos and copying
- **\$300.00** for their claim as listed above for fees

**Loss of Rent**

- The Landlords are claiming two months loss of rent (2 x \$3,800.00) at item # 57
- The Landlord provided evidence at tab 13 page 97 to support the rental unit was not re-rented immediately following the Tenants end of tenancy
- **\$7,600.00** for their claim as listed above for the appliances

**Travel Costs**

- The Landlords did not reside on the island where their property was located and are seeking travel costs and time to attend the rental unit
- These amounts are claimed at item numbers 54 - \$600.00; 55 - \$ 354.00; and 56 - \$2,400.00
- **\$3,354.00** for their claim as listed above for travel costs

The Tenants' and their Advocate's response to the Landlords' claim is as follows:

- The Advocate stated the Landlords admitted in their own materials that claims for damages are extinguished if no move in or move out inspection reports are completed
- The Landlords did not provide receipts for a majority of the items being claimed
- It is up to the applicant to prove there has been a loss suffered and without receipts they cannot prove this
- How can they come up with \$1,803.42 for cleaning supplies alone which makes us question how they determined these amounts
- There is no evidence of when this alleged work was done and it is critical for the applicant to prove their claim and that they have actually suffered a loss
- The Landlords used speculative dates so this weakens their evidence
- The time to claim to retain a security deposit is 15 days
- The Landlords did not conduct a proper move in or move out inspection
- There are no exceptional circumstances here
- They believe the Landlord is only entitled to make claims for cleaning here and not for damages
- The Tenants stated they outlined as much as they could and they believe their evidence gives all the information needed to know their rebuttal as provided in their evidence
- They note that there may be a possible misunderstanding in their phrasing of "holidays" of when the Landlords left the country
- The Landlords never left a contact number for when they were out of the country
- No information for a local contact was provided to the Tenants for the period the Landlords were out of the country

- They would just email the address listed on their tenancy agreement to contact the Landlords, no phone number was ever provided
- The emergency preparedness envelope did not contain emergency contact numbers or names
- The Tenants stated they would not have dealt with the emergency issues had the Landlord arranged to have a representative there for them to contact while the Landlords were out of the country
- When the Landlords called the Tenants it would never show a number on their call display. It would always show unlisted or redirected numbers
- The telephone number listed on their application for dispute resolution for the Landlords is a very recent number that they only obtained since the Landlords returned to the country.
- The Landlords are claiming their unfinished repairs as damages such as the work around the bath tub
- They have no knowledge of the alleged missing items; there were no mutually agreed upon lists created of items left in and around the house by the Landlords, there was no move inspection either... the Tenants had created a list which is listed at tab 11 page 6 of their evidence
- The Landlords' photos are zoomed in and do not fairly represent the items
- The Tenants deny that their dogs chewed the Landlords' desk
- It is disturbing that the Landlord provided a photo of a hole in the wall where their "bull noses" were installed; where one was obviously removed to show the hole for their photos. This was not damage, these were wooden circles screwed into the wall for decoration and which the hand railing sat on.
- The Tenants contend that they left the house clean and undamaged
- As per their evidence at tab 13 pg 74 the Landlord was at the house showing potential tenants so if there was that much damage why did he not mention it at the time of the showings
- Potential tenants started coming by to view the property as of July 2010
- As per their evidence they provided a copy of the Landlords' internet advertisement dated October 4, 2010 which notes it is available as of October 15, 2010 so this displays that they had a good idea that the house was fine
- The Landlords have increased the rent in these on line advertisements, first they listed it at \$2,990.00 per month and then at \$3,000.00 per month
- If this damage truly existed how could the Landlords not see it
- If the Landlords went to the trouble of getting receipts for photos or other costs why would they not provide receipts for their other items being claimed
- The Landlords did not provide receipts with proper dates, no business names, did not provide official receipts and their costs being claimed are vague
- What proof did the Landlords provide that these items were actually paid for

- It is just allegations that this property was not rentable for three months
- There is no evidence of broken windows or gouges in the walls
- The Landlords constantly mentioned a dirty shower door and are claiming \$1,000 plus \$675 for cleaning on their spread sheet
- It was not until two months after we left that the Landlords provide a witness statement about the condition of the shower stall, why wait two months to clean it
- Their application shows a request for two months rent not three months rent
- The Tenants anticipated the Landlords would claim they damaged the septic so they provided the evidence at tab 5 page 6 which indicates it was "cement like sewage" which is not normal
- The problems were found to be in the distribution box at the second pumping which is further away from the house and would take years of neglect to accumulate
- The Landlords claim it was the Tenants neglect that caused the well pump to break because of the leak at the garden hose or pipe. They contend that this is a red herring. They confirm the hose pipe leaked but this did not cause the well pump to break down. They were told that there was an underground pipe that had burst which caused the well pump to burn out.
- The Tenants stated the burst water pipe was located under the pavement and it burst because it was not installed low enough underground.
- Everyone, including the Landlords were aware of the leaking hose pipe and the Landlords did not patch the leak properly
- There was no mention of damages to the well pump in the Landlords' October 8, 2010 letter of damages and no mention that the Tenants would be responsible
- In the Tenants' evidence at tab 13 page 56 the Landlord writes "I know this is not your fault" when speaking about the well pump breaking
- The Tenant read her closing statement and stated they are seeking fair compensation as they feel they honoured their tenancy agreement and left the rental unit clean and undamaged
- They questioned the Landlords testimony about the dates their photos were taken as they noted one of the outside pictures displays the veranda with a railing
- They contest the property is still not rented because it is in a remote area, is a specialized property with high rent for a narrow market as per the Landlords evidence; and that it is not due to damage to the unit
- The onus is on the Landlords to clear issues up with their Tenants and to provide peace and quiet – the Tenants were under the assumption that they rented the house and surrounding property
- The male Landlord would be in the house unannounced several times during the tenancy

- They feel the Landlords' claims are outrageous and that the Landlords have the responsibility to repair and maintain their property

Prior to closing remarks the Landlords' Advocate posted direct questions to the Tenants as listed below. This is the only time during the hearing process that direct questions were posted.

- The Landlord's Advocate questioned the Tenants as follows:
  - Q: Please tell me where the ground was soggy and when did you tell the Landlords that the ground was soggy.
  - The Tenants replied stating there was no soggy ground that they had noticed therefore they did not report anything to the Landlords. They had learned after the end of their tenancy that the Landlords' workers discovered a burst pipe that was underground. They did not notice or see any problems and it took experts to find the problem.
- The Advocate stated that while the Landlords claim against the security deposit is extinguished their claim for damages is not. Furthermore she argues the Landlords are not limited to 15 days to make a claim for damages
- The Advocate stated she is of the opinion that receipts are not required and that the Landlords need only to prove there are damages or loss as per section 7 of the *Residential Tenancy Act*
- The Landlords' Advocate turned her questions towards the Landlords and asked:
  - Q: Did the Tenants ever phone you?
  - A: Yes, several times.
  - Q: Did they have your phone number?
  - A: Yes
- The Advocate referenced the Residential Tenancy Policy Guideline # 3 in support of the Landlords' claim that the property was not rentable due to damage
- The Landlords advised the rental property has not been re-rented as of yet (June 9, 2011)
- The Landlords' Closing Remarks
- The repair work was too much to do
- The Landlord had personal issues to deal with so they had to stop work on the property
- They changed their request for loss of rent because they evaluated what was fair at the time and thought two months not three months was fair
- The Landlords confirmed there were no inspections. The Tenants said they would participate for a move out but then they walked away shortly after they started the inspection

- They advertised the property because they needed to re-rent it right away
- The Landlords pointed out that in the Tenants' own submission they admit to burning the counter with their toaster oven
- They refute the Tenants' statements that they do not know about the missing items as most of them were in the rental house at the outset of the tenancy and are displayed in the photos provided in their evidence at tab 14 page 103. These photos were taken in 2008.

### Analysis

11.4 of the *Residential Tenancy Branch Rules of Procedure* provides that If a party does not provide evidence in advance in accordance with Rule 3.1 [documents that must be served] and Rule 3.5 [evidence not filed with the Application for Dispute Resolution], that party must bring to the dispute resolution proceeding sufficient copies of that evidence for all of the parties and the Dispute Resolution Officer. The Dispute Resolution Officer will decide whether to accept this evidence in accordance with Rule 11.5 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

At the closing of the March 14, 2011 hearing and again on April 11, 2011 all participants were advised due to the expiration of the hearing time the hearing would be reconvened at a future date. Each party was instructed not to submit additional evidence. Neither party submitted additional evidence prior to the April 11, 2011 reconvened hearing.

It was during the April 11, 2011 reconvened hearing which the Tenant and Occupant presented the merits of their application, each Landlord provided testimony in response and I asked my clarifying questions. Both Landlords were provided an opportunity to present evidence in response to the Tenant's claim.

At the closing of the April 11, 2011 hearing the parties were instructed a second time that I would not accept additional evidence prior to the next reconvened hearing. They were also advised that the next time we convened the Landlords would be presenting the merits to their application, followed by the Tenants' response and cross examination, and each party's closing remarks.

During the two month period between April 11, 2011 and the reconvening on June 9, 2011, the Landlords hired an advocate, reworked their response to the Tenant's presentation of their claim and submitted volumes of additional evidence to the Tenants and the *Residential Tenancy Branch*, contrary to my previous instructions.

Each reconvened hearing does not constitute a new hearing; rather they are a continuation of the initial hearing. Therefore I hold to Rule 3.1 and Rule 4.1 of the *Residential Tenancy Branch Rules of Procedures* which stipulate evidence must be provided in advance of the hearing.

I find that to accept the additional late evidence from the Landlords would prejudice the other party and would result in a breach of the principles of natural justice because the Tenants would be deprived of the ability to spend 2 months reworking their response to the Landlords' presentation of their claim. Therefore I decline to consider the Landlords' additional late evidence and the female Landlord's oral presentation of that evidence, pursuant to Rule 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*.

The Landlord's have stated they could not view the DVD evidence which was provided in the Tenants' evidence. Therefore the photos on the DVD will not be considered in my decision pursuant to Rule 11.5 and Rule 11.8 of the *Residential Tenancy Branch Rules of Procedure*.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

### **Tenant's claim \$18,007.00**

The evidence supports the fixed term tenancy ended September 30, 2010 and the Tenants' forwarding address was sent to the Landlords via registered mail September 27, 2010. The Landlords are deemed to have received the forwarding address October 2, 2010, five days after it was mailed in accordance with section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposits, to the tenant with interest or make application for dispute resolution claiming against the security and pet deposits.

In this case the Landlords were required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than October 17, 2010. The Landlords did not file their application until February 25, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security and pet deposit. Therefore, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security and pet deposits (2 x \$1,600.00) + (2 x \$1,600.00) plus interest on security and pet deposits from August 5, 2008 to July 7, 2011 of \$19.74 for a total amount of **\$6,419.74**.

Section 33(1) of the *Act* provides that in this section, "**emergency repairs**" means repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing (i) major leaks in pipes or the roof, (ii) damaged or blocked water or sewer pipes or plumbing fixtures, (iii) the primary heating system, (iv) damaged or defective locks that give access to a rental unit, (v) the electrical systems, or (vi) in prescribed circumstances, a rental unit or residential property.

Based on the aforementioned I find the Tenants' claim for repairs to the hot water tank, water pump, and sewage system meet the definition of emergency repairs.

Section 33 (2) of the *Act* provides the landlord must post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

There is sufficient evidence to support the Tenants had email communications with the Landlords for the periods of September 2008 to December 19 2008 and again beginning May 2009 until the end of the tenancy. I note there is no evidence before me that supports there were communications between the parties, email or otherwise between the period of December 20, 2008 and April 24, 2009.

I accept the Tenants' evidence that the Landlords failed to provide a contact telephone number and that when the Landlords called the call display showed that the number was unlisted or redirected.

Based on the aforementioned I find the Landlords breached section 33(2) of the Act as they failed to provide the Tenants with an emergency contact name and telephone number.

The parties communicated via e-mail December 14, 2008 pertaining to the frozen hot water source, as supported by the Tenants' evidence where the male Landlord is providing directions where the Tenants can locate the hot water tank and suggestions on what may be causing the problems. I note that at no time did the Landlord offer to have someone attend the rental unit to conduct repairs, during this communication; rather I find it clear that the Landlord was expecting the Tenants to deal with the situation.

I accept the Landlords' evidence that he informed the Tenants, via e-mail, that a cable needed to be installed on the hot water tank and that when they offered to install it, the Landlord agreed. There is no evidence to support the Landlord followed up this communication to ensure the cable was installed. The Landlord did not provide written instructions to the Tenants for the required maintenance of the hot water tank or anything else pertaining to the rental property.

After careful consideration of the evidence before me I find that a reasonable person ought to have known that when providing such detailed information as to the maintenance or operation of mechanical equipment written instructions would need to be provided to ensure the instructions could be carried out as requested.

The Landlords admit that at the outset of the tenancy they felt the need to provide the Tenants an orientation on how to manage the property and that this orientation with several instructions was provided orally with no written instructions provided.

I do not accept the Landlords' submission that they were not previously informed of the requirement for repairs or the Tenants' requests for reimbursement for repairs that were paid for the hot water tank, water pump, and sewage pump. Rather the evidence provided by the Tenants supports their testimony that they had informed the Landlords via e-mail, when they had contact with them and that they provided the receipts to the female Landlord in May 2009 which was followed up by an e-mail requesting payment in December 2009.

Section 33(5) of the Act provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenants' evidence included a photo copy of a cheque in the amount of \$84.00 which was the payment to the plumber who attended to repair the hot water tank. I accept this evidence as a receipt of payment for services rendered by the plumber.

Based on the aforementioned I find the Tenants have met the burden of proof for the cost of emergency repairs (Hot Water Tank, Water Pump, and Sewage Pumped and Repaired) and I approve their claim in the amount of **\$1,307.00**.

The Tenants seek \$500.00 for the loss of internet and television service. The tenancy agreement does not provide for uninterrupted service of internet or television service. I find that a reasonable person ought to have known that living on an Island could cause minor interruptions in service of this nature. Therefore I find there to be insufficient evidence to support this claim is the result of the Landlords' breach, and I dismiss the claim of \$500.00, without leave to reapply.

I accept the evidence supports the Landlords used bleach to treat the pond water however there is insufficient evidence to prove the water was unpottable and I dismiss the Tenants' claim of \$2,880.00, without leave to reapply.

On October 11, 2008, the Tenants paid the Landlords \$36,800.00 as rent for the entire first year of their tenancy which was scheduled to begin on October 15, 2008, as per the tenancy agreement. It was after receiving this payment that the Landlords informed the Tenants that their occupation date would be delayed as the Landlords had not yet vacated the rental house. I accept the Tenants' claim that the Landlords over held the rental property in breach of the tenancy agreement and I approve their claim in the amount of **\$200.00**.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find it undeniable that the Tenants have suffered a loss of quiet enjoyment for approximately two months between October 16, 2008 and November 28, 2008; prior to the Landlords departure from the country; and again December 20, 2009 to mid April 2010; during the period the Landlords were determining the problems with the well pump. Therefore I find the Tenants suffered a loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the Landlords attended the rental unit during various times of the day and week and were inside or looking into the rental unit unannounced for short periods of time.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction of \$3,520.00, based on Section 27, they have provided no evidence indicating that the Landlords have breached section 27 of the *Act*, rather their evidence pertains to a breach of section 28 of the *Act* and they have included this claim and their evidence under the heading for loss of quiet enjoyment.

After careful consideration of the aforementioned and evidence I find the \$3,200.00 claimed for loss of privacy and the \$3,520.00 claimed for reduced rent meet the requirements for claims of loss of quiet enjoyment and aggravated damages. I find the Tenants are entitled to compensation in the amount of **\$4,400.00** pursuant to section 67 of the *Act*.

The Tenants have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Total amount awarded to the Tenants above: \$12,376.74

**Landlords' claim \$23,447.35**

Section 24 (2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (a) does not comply with section 23 (3) *[2 opportunities for inspection]*, (b) having complied with section 23 (3), does not participate on either occasion, or (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

This section prevents a landlord from a claim for damages against the security deposit however it does not prevent a landlord for making a claim against a tenant for damages.

The *Residential Tenancy Regulation # 21* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlords rely on statements obtained from real estate agents who viewed the property two months prior to the onset of the tenancy as their evidence to support the condition of the rental property at the onset of the tenancy. In support of the property condition at the end of the tenancy the Landlords rely on photos taken of the inside of the rental house.

A significant factor in my considerations is the credibility of the evidence. I am required to consider the Landlords' evidence not on the basis of whether it "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The evidence supports that in October 2010 the Landlords sent the Tenants a list of damage and loss totalling \$6,821.60 which was arbitrarily increased to \$23,447.35 in the Landlords application for dispute resolution which was filed four months after the Tenants made their application for dispute resolution in the amount of \$18,007.00.

In the absence of evidence to support the actual amount of loss and in considering the Landlords' evidence of the October 2010 list of claims totalling \$6,821.60, I find that on a balance of probabilities the Landlords simply altered their claim in a retaliatory fashion so it would be a higher amount than that being claimed by the Tenants. That being said,

the *Residential Tenancy Act* provides that claims can be made for damage or loss up to two years from the end of the tenancy; therefore the Landlords were at liberty to increase the amount they made their claim for. The Landlords are however still required to meet the burden of proof that these losses were suffered as a result of the tenancy.

The evidence supports the tenancy agreement provides that the Tenants were to maintain the property in its' current state. The Landlords allege they had verbal discussions and agreement from the Tenants as to what maintaining the property entailed.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In the absence of a move in inspection report or a preponderance of evidence which proves the condition of the exterior landscape of the rental property at the onset of the tenancy and without detailed written documentation of what was agreed to by the Tenants for maintenance of the property, I find there to be insufficient evidence to meet the burden of proof that the Tenants breached the Act, regulation or tenancy agreement by failing to maintain the property in its current state. Therefore I dismiss the Landlords' claim of \$1,139.20 for landscaping and machine work of \$112.00, without leave to reapply.

I accept the Landlords' evidence which was in the form of a notarized letter from a real estate agent that spoke to the condition of the rental house at the end of the tenancy. That being said, I accept this letter with caution given to the descriptive language used by the realtor as I am unclear of the relationship between the Landlords' and the realtor and the potential for ulterior motives on the part of the realtor. That being said, I accept that this letter indicates that the condition of the interior of the house was worse at the end of the tenancy when he saw the property in December 2010 from that when he first saw the property in August 2008, prior to the tenancy.

Section 32 of the *Act* provides (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After careful consideration of the aforementioned I find the Landlords have met the burden of proof that the Tenants breached sections 32 (1) and (2) of the Act. That being said, in the absence of a move in or move out inspection report and in the absence of copies of receipts proving the actual cost of the loss being claimed for the interior of the rental property, I find there to be insufficient evidence to meet the burden of proof for the amounts being claimed by the Landlords for cleaning (1,761.42), replacement of carpets (\$980.00), wood floor and stair repair (\$836.00), wall repairs and plastering (\$534.80), painting (\$300.00), and damage to appliances (\$419.12) totaling \$4,831.34.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there is insufficient evidence to prove the amount of the loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlords are entitled to nominal damages and award them the following: cleaning labour \$1,600.00 (2 x 40 hours x \$20.00 per hour), cleaning supplies \$25.00, carpets \$300.00, wood floor and stair repair \$160.00 (8 hours x \$20.00), wall repairs, plastering \$50.00, painting \$250.00, damage to appliances \$175.00 for a total amount of **\$2,560.00**. The balance of \$2,271.34 (\$4,831.34 – 2,560.00) is hereby dismissed without leave to reapply.

In the presence of the Tenants’ opposing evidence that the work to the tile around the bathtub was a renovation project; that damage to the threshold and doors were present at the outset; and that their dogs did not damage the desk top, I find there to be insufficient evidence to support the Landlords’ claim of loss. Therefore I dismiss the claims of \$448.00 for retiling and \$532.00 for repairs to the threshold, doors, and desk top, without leave to reapply.

In the absence of a move in inventory list or inspection report and after considering the Landlords did not fully vacate the house prior to the onset of the tenancy agreement, I find there to be insufficient evidence to support the amounts claimed by the Landlords for the alleged missing personal possessions (\$429.76) or for damages allegedly caused to their possessions (\$826.18); with the exception of the burnt kitchen countertop which is claimed at item 23 for the amount of \$112.00. Based on the aforementioned I dismiss the amount claimed of \$1,143.94 (\$429.76 + 826.18 – 112.00), without leave to reapply.

The evidence provided by the Tenants supports the Landlords’ claim that damage was caused to the kitchen countertop during the Tenants’ tenancy. I accept the amount

claimed to be a reasonable amount and I award the Landlords **\$112.00** for damage to the kitchen counter, pursuant to section 67 of the *Act*.

The Landlords seek \$1,300.30 for septic tank repairs and \$2,374.57 for the well pump replacement due to what they allege was the Tenants' negligence.

There is insufficient evidence to prove the septic tank had been regularly maintained prior to the tenancy and there is no evidence before me that supports it was the Tenants' actions that caused the septic to back up into the lower bathroom or to cause the septic pipe to burst. On the contrary the evidence provided by the Tenants supports the septic system and field had been neglected. The Landlords' testified they treated the pond water with bleach and their evidence page 76 further indicates problems in the septic tank were caused by the presence of "bleach or some other product had been killing the bacteria in the tank". Based on the aforementioned there is insufficient evidence to prove the septic tank, field, or septic line repairs were required due to the Tenants' negligence or breach, therefore I dismiss the Landlords' claim of \$1,300.30, without leave to reapply.

Furthermore the evidence supports that both parties were aware of water streaming from the garden hose pipe and neither party took action to properly repair this leak. There is insufficient evidence to support it was this garden hose pipe leak that caused the well pump to burn out. Rather, the Tenants provided evidence that it was later determined by the Landlords' contractors that a pipe under the concrete had burst which caused the pump to run continuously and burn out. I note that the Landlords did not refute this evidence.

Therefore in the presence of opposing testimony, I find there to be insufficient evidence to support the well pump burnt out as a result of the Tenants' negligence or breach and I hereby dismiss the Landlords' claim for the well pump repair of \$2,374.57, without leave to reapply.

The *Residential Tenancy Policy Guideline #1* provides that (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.

The Tenants admitted to removing the Landlords' satellite dishes and wiring from the rental house and installing a new satellite dish and wiring installed without the Landlords prior approval; and did not re-install the satellite dishes and wiring at the end of the tenancy. Based on the aforementioned I find the Landlords have met the burden of proof and I approve their claim of **\$200.00**.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

*A pecuniary allowance....Generally "costs" do not include fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*

In relation to travel fees (ferry, mileage, time \$3,354.00), and fees to compile and serve evidence (photocopying, photo development, postal \$200.00) I find that the Landlords have chosen to incur these costs that cannot be assumed by the Tenants.

Therefore, I find that the Landlords may not claim these fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. I therefore dismiss the Landlords' claim of \$3,554.00 (\$3,354.00 + \$200.00), without leave to reapply.

Having found above that the Tenants breached section 32 of the Act by leaving the rental unit in a worse state at the end of the tenancy I find the Landlords would not have been able to re-rent the unit immediately following the end of the tenancy. That being said I find there to be insufficient evidence to support it would take two months to restore the rental unit to a condition that it could be occupied. There is evidence which supports the Landlords did not act in a timely manner due to their own personal circumstances. I accept the Landlords may have been negotiating with a potential tenant however, I do not accept the evidence which suggests the Landlords had entered into a tenancy agreement with a new renter at \$3,800.00 as no signed agreement was provided in evidence. Based on the aforementioned, I find the Landlords have met the burden of proof to claim loss of rent for one month, in the amount of **\$3,200.00**. The balance of \$4,400.00 (\$7600.00 - \$3,200.00) loss of rent is dismissed without leave to reapply.

The Landlords have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **\$50.00**.

Total amount awarded to the Landlords above: **\$6,122.00**

**Monetary Order** – I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

|  |                   |
|--|-------------------|
| Tenants' award                                 | \$12,376.74       |
| LESS: Landlords' award                         | -6122.00          |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b> | <b>\$6,254.74</b> |

### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$6,254.74**. This Order is legally binding and must be served upon the Landlords.

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 08, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

**File No: 763308**  
**Additional File(s):768686**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**(AGENT), Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**Tenant(s),**  
Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Gibsons, BC

Date of Hearing: March 17, 2011, by conference call.

Date of Decision: March 17, 2011

Attending:

For the Landlord:

s.22

Agent

For the Tenant:

s.22

## **DECISION**

Dispute Codes      MNSD MNDC FF  
                             MNSD RPP FF

### Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Agent confirmed she wished to amend their application to request money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord had indicated these requests in the notes written in the details of the dispute; therefore the Tenants were made aware of the Landlord's request in the initial application and would not be prejudiced by the Agent's request to amend the application.

After reviewing the Tenants' application for dispute resolution, at the onset of the hearing, the Tenant confirmed they wished to amend their application to request the return of their personal property.

The Tenants had indicated these requests in the notes written in the details of the dispute; therefore the Landlord was made aware of the Tenants' request in the initial application and would not be prejudiced by the Tenants' request to amend the application.

Based on the aforementioned I approve the Agent and Tenants' request to amend their applications as stated above, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing convened on February 17, 2011, and again for the present session on March 17, 2011. This decision should be read in conjunction with my interim decision of February 18, 2011.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 20, 2010. The Tenants confirmed receipt of the hearing documents from the Landlord.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Agent on approximately February 12, 2011. The Agent confirmed receipt of the hearing documents from the Tenants.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

#### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach?
5. Have the Tenants met the burden of proof to obtain an Order to have the Landlord return their personal property?

#### Background and Evidence

I heard undisputed testimony that the parties entered into a month to month written tenancy agreement effective May 1, 2006. Rent was payable on the first of each month in the amount of \$985.15. On approximately April 28, 2006 the Tenants paid the Landlord \$475.00 as the security deposit. The parties wrote some form of a move in inspection of the back of the tenancy agreement, however did not provide a copy into evidence. No move out inspection was completed.

The Tenants testified that they provided the Landlord with written notice to end their tenancy on August 31, 2010 when they left a letter at the Agent's office. They then called the Agent a few days later to advise a letter to end their tenancy had been dropped off and they were ending their tenancy effective September 30, 2010. They

state they first provided the Agent with their forwarding address on the phone and later provided it in writing to the Agent's office during the second week of October 2010.

The Tenants confirmed they had an agreement with the new tenants that they could move their stuff in early and in exchange they could leave their boat in the driveway for a few days until the person who purchased the boat could come by and pick it up on approximately October 2, 2010. They never had a discussion with the Landlord or Agent about leaving the boat in the driveway and were surprised to hear the boat was gone when their friend came by to pick it up. They called the Landlord and left messages to find the boat however the Landlord did not return their calls. They had sold this boat to their long time family friend but at the time he came to pick up the boat the money had not changed hands and no agreement of purchase or sale had been written. When clarifying the applications at the outset of the hearing the female Tenant stated that they were not wanting the boat returned and are seeking monetary compensation for the loss of the sale of the boat.

They feel they are entitled to receive the return of their security deposit because they let the new tenants move in early and worked with them to clean the unit. They had arranged to have a professional steam cleaner come in but when he arrived he could not clean the carpets because there was too much stuff in the house. The Tenants provided photographs that were taken the morning of September 29, 2010 which display the new tenants' possessions inside the rental unit. They did rent a steam cleaner to clean their furniture and used it on the carpets but it did not clean them very well.

The Agent testified that she did not receive any notice to end their tenancy in writing; rather she received a telephone call from the male Tenant on September 4<sup>th</sup> or 5<sup>th</sup>, 2010, advising her that they were moving out at the end of September. She told him that it was too late to provide notice and they would have to stay until October 31, 2010. The Agent agreed to allow the male Tenant to find new tenants providing the Agent could interview them and approve them. The Tenants were able to find new tenants that she approved of and they are the current tenants. It was the Tenants who arranged between themselves to allow the new tenants to move in early and she believes they moved in September 28, 2010. The Landlord confirms receiving the Tenants forwarding address during the second week of October 2010. The Landlord did not provide the Tenants with two opportunities to conduct the move out inspection and did not serve them with a final notice of inspection.

The Agent stated she was told by the new tenants that garbage and the boat were left behind by the Tenants. Then on October 2, 2010 the Landlord was told the larger items

like the trampoline were picked up by the Tenants however there was still garbage and the boat in the driveway. The Landlord hired her friend to haul the debris and boat away. She confirmed she did not have a conversation with the Tenants about their intentions of removing the boat prior to having her friend pick it up. The boat is currently being stored at her friend's scrap metal yard.

The Agent is seeking reimbursement of \$156.80 for having the carpets cleaned as supported by the invoice she provided in her evidence dated October 3, 2010. She advised the entire upstairs was carpet and the main floor was all laminate and the photos provided by the Tenants show the new tenant's possessions in the lower level. There were some rat feces on the carpet so the carpet cleaner recommended they treat the carpet while it was being cleaned and was included in his invoice.

The Agent has sought \$315.00 for cleaning of the rental unit and patching walls. She referred to a hand written invoice provided in her evidence and confirmed this invoice is from the new tenants who completed the work. The invoice is dated October 20, 2010.

The Agent is claiming \$90.00 for the removal of junk left at the rental unit as supported by the invoice dated October 5, 2010. After a brief discussion the Agent stated that she had nothing to do with the Tenants making the arrangements with the new tenants to move in September 28, 2010. This agreement was between them. She confirmed she did not conduct a move out inspection with the Tenants and made no arrangements to do so.

In closing, the Tenant argued that their pet rat was deceased since May 2010 and they would not leave feces or urine on the carpets for that length of time. In addition their rat was never allowed up in the bedrooms so there was no reason to have the carpets treated.

### Analysis

I have carefully considered all of the testimony and evidence before me.

### **Landlord's application**

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, which includes having the carpets steam cleaned. The Tenants may have cleaned the carpets with the rented cleaner but by their own testimony it did not clean the carpets that well. A charge of \$156.80 to clean three bedrooms and adjoining areas is not unreasonable. Therefore I find the Landlord has met the burden of proof, as listed above and I approve their claim of **\$156.80**.

The evidence supports no move out inspection was completed and the Tenants handled the move-out and move-in of the new tenants. Section 36(2) of the Act provides that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not comply with section 35(2) and complete the move-out inspection report. The remainder of the Landlord's claim pertains to expenses for cleaning, repairs, and junk removal which all occurred after the Tenants vacated the property on September 29, 2010 and the new tenants took possession of the unit. Therefore I find there to be insufficient evidence to support these costs were solely the result of the Tenants actions or neglect. Based on the aforementioned I find the Landlord has provided insufficient evidence to meet the burden of proof and I hereby dismiss their claim of \$405.00 (\$240 + 90 + 75) without leave to reapply.

The Landlord has been partially successful with their application; therefore I award recovery of the filing fee in the amount of **\$25.00**.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

|  |                  |
|--|------------------|
| Carpet cleaning  | \$156.80         |
| Filing fee   | 25.00            |
| Subtotal (Monetary Order in favor of the landlord)         | <b>\$181.80</b>  |
| Less Security Deposit of \$475.00 plus interest of \$16.03 | - 491.03         |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b>             | <b>\$ 309.23</b> |

### Tenants' application

Part 5 of the Regulation provides that a Landlord may consider property as "abandoned personal property" only if (a) the tenant leaves the property on residential property that he or she has vacated after the tenancy agreement has ended, **and** (b) the property is left for a continuous period of one month, **and** (2) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property to retrieve their possessions.

The evidence supports the Landlord removed the Tenants' boat on or about October 5, 2010, less than one month after the tenancy ended and without express oral or written notice from the Tenants of their intentions to remove the boat, in breach of Part 5 of the Regulation. The boat is currently being stored by the Landlord's friend.

A significant factor in my decision is the consideration of the written statement provided by the Tenants' Witness. I am required to consider the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Tenants' Witness' evidence was coloured by the fact that he is their close, long term family friend. I also note that at the outset of the hearing when we were reviewing the Tenants' application about their personal property, the female Tenant originally stated that she did not want the boat returned because the sale had fallen through, so they were seeking monetary compensation.

Based on the aforementioned, I do not accept the Tenants' testimony or evidence which indicates the boat was sold. In order to substantiate a contract for sale there must be capacity, consensus, and consideration. In this case there was capacity to enter into an agreement and there was an alleged verbal agreement. There was however, no written agreement to purchase or sell the boat and no consideration or payment was made to secure the contract. Therefore I dismiss the Tenants' claim of \$600.00, without leave to reapply.

Having found above that the Agent breached the Regulations when she removed the boat, she is hereby ordered to return it to the Tenants at their new address, at her cost,

pursuant to section 65 (1)(e), on a date and time that is mutually agreed upon between the parties. Any costs incurred for storage or delivery of the boat is the responsibility of the Landlord.

That being said, in light of the Tenant's previous comment about not wanting the boat returned, the parties are at liberty to enter into a written mutual agreement if they wish to dispose of the boat.

The Tenants are entitled to the return of the balance of their security deposit and interest of **\$309.23**, as noted above.

The Tenants have been partially successful with their application therefore I award them recovery of **\$25.00** from their filing fee.

#### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$334.23** (\$309.23 + 25.00). The Order must be served on the Landlord and is enforceable through the Provincial Court 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: March 17, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

**File No: 769812**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Trail, BC

Date of Hearing: March 31, 2011, by conference call.

Date of Decision: March 31, 2011

Attending:

For the Landlord: No One

For the Tenant: No One

## **DECISION**

Dispute Codes      DRI

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute an additional rent increase.

No one was in attendance for either the Landlord or the Tenant.

### Issue(s) to be Decided

1. Has the Tenant been issued an additional rent increase?
2. If so, does the rent increase meet the requirements of the Act?

### Background and Evidence

There was no additional evidence or testimony provided as there was no one in attendance at the scheduled hearing.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenant and respondent Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant or respondent Landlord called into the hearing during this time. Based on the aforementioned I find that the Tenant has not presented the merits of their application and the application is hereby dismissed with leave to reapply.

Conclusion

**I HEREBY DISMISS** the Tenant's application, with 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: March 31, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 770814**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

**EASYRENT REAL ESTATE SERVICES LTD, Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Vancouver, BC

Date of Hearing: May 19, 2011, by conference call.

Date of Decision: May 24, 2011

Attending:

For the Landlord: Sean (Shahram) Rafati, Property Manager (Landlord)

For the Tenant:

s.22

## **DECISION**

Dispute Codes      MNDC FF

### Preliminary Issues

At the outset of the hearing the Tenant confirmed that his tenancy has ended and he wished to amend his application for dispute resolution by withdrawing his requests to obtain an Order to have the Landlord make emergency repairs for health and safety reasons, to allow the tenant reduced rent for repairs, services, or facilities agreed upon but not provided, and for other reasons.

Based on the aforementioned I approve the Tenant's request to amend his application as this reduces the claim being sought against the Landlord. This amendment was considered pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing convened on March 22, 2011 and was adjourned to ensure both parties had fair opportunity to receive and respond to the evidence submitted by the other. The teleconference hearing reconvened for the present session on May 19, 2011. The Tenant is seeking a Monetary Order for compensation for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*. The Landlord testified that he had received all of the Tenant's evidence. The Tenant testified that he did not receive the most recent package of evidence sent by the Landlord in May 2011. The Landlord advised that this last evidence was sent May 11, 2011 via registered mail to the address that was listed on the receipt the Tenant submitted for his temporary accommodation in March 2011.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which began January 1, 2011 and was set to switch to a month to month tenancy after December 31, 2011. Rent was payable on the first of each month in the amount of \$2,425.00 and on December 28, 2010 the Tenant paid \$1,212.50 as the security deposit.

The Tenant advised that he has received the return of his full damage deposit in the amount of \$1,212.50 so he was no longer claiming this. The balance of his claim is \$10,412.16 and is comprised of the following items:

- \$1000.00 for rent March 5 - March 12, 2011 for alternate accommodation
- \$1,568.00 for rent March 12 to March 30, 2011 for alternate accommodation
- \$237.16 to cover the cost of hiring the mold expert and obtain their report
- \$340.00 for the cost to hire the moving company on March 10, 2011.
- \$2,417.00 for the cost of "furnishers" (sic) which had mold and were thrown out

The Tenant testified that on January 3, 2011 he e-mailed the Landlord to advise there was a dark spot on the window blind. There was no further communication with the Landlord about this spot. Then on February 28, 2011 he e-mailed the Landlord a photo of the ceiling directly above a window to advise there was the presence of mold in the rental unit which is seriously affecting his family's health. The Landlord did not respond to his e-mail until the next day, March 1, 2011, which is the date the Tenant had scheduled for a mold inspector to attend the unit. He had arranged for the mold inspector to come prior to notifying the Landlord. He believes he had found the mold inspector the same day he sent the Landlord the notification email, February 28, 2011, but he was not certain.

The Tenant claims the Landlord responded to his e-mail on March 1, 2011 and advised him he would be compensated. He told the Landlord he could no longer live there. The Landlord stated that he was checking with the Strata to determine responsibility. The Tenant argued that he could not be stuck in the middle of a fight between the Strata and the Landlord as this situation was affecting their health. He advised that he s.22

s.22

The Tenant stated that when the Landlord did not respond to his requests to end the lease he contacted the owner directly. On March 8<sup>th</sup> the owner wrote him and told him it was okay for him to break the lease. It took the Landlord nine days to honour the owner's decision and during that time the Landlord continued to try and delay the ending of the lease.

The Tenant had his lawyer write to the Landlord which included a request that no work be started in the rental unit until all of the Tenant's property is removed and which also offered the Landlord the opportunity to settle this matter. The Landlord did not accept the offer to settle this matter however he did agree to cancel the lease as of March 16, 2011. The Tenant hired movers to remove his property on March 10, 2011 as supported by his evidence.

The Tenant is of the opinion that the Landlord was negligent by not informing them of the presence of mold at the outset of the tenancy, therefore he is seeking damages from January 3, 2011, when he first noticed the black spot on the blinds. The Tenant stated that he did not notice any changes in the apartment over time "appearance wise" and would not know what to look for because he did not know what mold was. Their

s.22

I asked the Tenant why he would think to hire a mold inspector if he did not know what mold was. He stated that it was their friend who suggested that they hire a mold inspector. When I questioned when this conversation took place the Tenant initially stated it was immediately after the previous dispute resolution hearing and then he began to falter and stated that he was not sure of when this discussion occurred. When I questioned why the Tenant did not discuss this situation with the Landlord before hiring a mold inspector the Tenant advised that the Landlord took 25 days to replace a stove and he did not want to delay this situation because he needed to know for his own health. The Tenant stated that he hired the mold inspector, without the Landlord's permission, out of his own good will.

The Landlord testified that the Tenant's testimony is comprised of stories taken out of context and does not include the full stories. He confirms receiving the Tenant's e-mail on February 28, 2011 claiming there was the presence of mold and that they responded less than 12 hours later, on March 1, 2011 advising they would hire an inspector; only to have the Tenant respond advising them he had hired an inspector and that it would be inspected that day.

The Landlord referred to the mold report provided by the Tenant and stated the report does not state the unit is uninhabitable. After reviewing the report the Landlord told the Tenant that they could not break the lease because the report did not state the unit was uninhabitable; therefore the Landlord requested a few days to address the situation.

Sometime around the third of March 2011 the Landlord received a notice to end tenancy from the Tenant that was dated February 28, 2011. He informed the Tenant the situation was not that serious and could be repaired prior to March 31, 2011 as it was not that expensive to repair. The Landlord informed the Tenant that if he could provide a doctor's note that stated he could not stay in the unit then they could discuss ending the tenancy but the note the Tenant provided made no reference to the Tenant occupying the unit.

The Landlord did not receive the mold report from the Tenant until March 2, 2011 and he had professionals attend the unit on March 3, 2011 to wash off the mold. This unit was professionally cleaned at the end of October 2010 and then stayed vacant until the Tenant occupied the unit in late December 2010. There was no presence of mold during that time and there is no mention of mold on the move-in inspection dated December 28, 2010.

The Landlord had a restoration worker attend the unit on March 11, 2011 because the Tenant had indicated they had vacated the property. However when the worker attended he found the Tenant's relatives inside the unit cooking and there was a lot of humidity in the unit. The unit was filled with furniture and there was no indication of anyone moving as there were no boxes in the process of being packed up.

The Landlord confirmed receipt of the letter sent by the Tenant's lawyer and stated they were following directions provided in that letter not to conduct work until the Tenant had vacated. They were not delaying in attending to this matter or ending the tenancy they were awaiting notice that the Tenant had vacated. They informed the Tenant that they had to have the opportunity to inspect the unit to determine if there was simply cosmetic damage or if the repair would require a full remediation. Then on March 15, 2011 they sent the Tenant an e-mail (a copy was provided in their evidence) where they confirmed

they were not saying “No” to the Tenant’s requests and they confirmed that their duty as property managers was to follow a due process and do things correctly.

The Landlord advised that in this case the Tenant simply does not like how they have to operate and does not understand the time frames required to operate their business. The Landlord has not been negligent in any way, rather it was the Tenant who went out and hired a specialist without consulting the Landlord first. The Owner does not say in his response to the Tenant that they would end the tenancy rather they said they would discuss it with the property manager. There is no misrepresentation on the part of the Landlord and they did not make the Tenant or his family suffer.

The repair costs were only \$2,500.00 and all of the work could have been performed with the Tenant still occupying the rental unit. The Tenant kept saying he had moved out yet the unit was still occupied. The Landlord questions the moving receipt provided by the Tenant dated March 10, 2011 as there is no way a moving company would move a fully furnished 3 level town house for only \$300.00. The Tenant notified the Landlord on March 16, 2011 that they have fully vacated the unit, the tenancy was ended March 17, 2011 and a move-out inspection was completed the following Monday, March 21, 2011.

The Landlord has refunded the Tenant’s full security deposit of \$1,212.50 and accepts responsibility to pay the Tenant \$237.16 for the cost of the mold report plus returning the rent for the period of March 17, 2011 to March 31, 2011.

In closing the Tenant states there was no one living in the rental unit as of March 5, 2011 and his furniture was moved out on March 10, 2011 which is supported by the copy of the invoice he provided in evidence.

### Analysis

The Landlord confirmed they sent their last package of evidence to an address provided on a receipt for temporary accommodations provided in evidence by the Tenant and did not sent it to the address provided by the Tenant during the previous hearing.

Based on the aforementioned I find the Landlord did not provide the Tenant with copies of their most recent evidence (May 2011) in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not received copies of the Landlords’ evidence served on May 11, 2011, I find that this evidence cannot be

considered in my decision. I did however consider the Landlord's testimony pertaining to that evidence and all evidence served to the Tenant prior to May 11, 2011.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord accepts responsibility to reimburse the Tenant \$237.16 for the cost of the mold report plus rent previously paid for the period of March 17, 2010 to March 31, 2011. Therefore I approve the Tenant's claim in the amount of **\$1,433.11** which is comprised of \$237.16 for the report fee plus \$1195.95 in rent (15 days x \$79.73 per day).

The remainder of the Tenants claim pertains to costs to stay in temporary accommodation, moving costs, furnishings that were disposed of, and return of rent for January and February 2011.

Based on the foregoing, the relevant evidence which consisted of, among other things, a detail listing of the Tenant's claim, numerous e-mails between the parties, s.22

s.22

purchased, and on a balance of probabilities, I find as follows:

The evidence,

s.22

s.22

The restoration report confirms there is a presence of “visible fungal contamination” and then explains the process for remediation. This does not confirm the presence of mold or that the unit is uninhabitable.

After careful consideration of the evidence before me I find there to be insufficient evidence to meet the burden of proof that the Landlord and/or owner breached the *Residential Tenancy Act*, regulation or tenancy agreement. Furthermore I find the Tenant failed to mitigate his losses by moving out of the unit and incurring temporary living costs and moving cost. He could have chosen to be absent from the rental unit for only a couple of days, during the remediation, and then return to continue his tenancy upon completion. Based on the aforementioned I hereby dismiss the remainder of the Tenant’s claim, without leave to reapply.

The Tenant has not been primarily successful with his application; therefore I find he must bear the burden of his own application fee.

### Conclusion

The Tenant’s decision will be accompanied by a Monetary Order in the amount of **\$1,433.11**. This Order must be served upon the Respondent Landlord and may be enforced through Provincial Court 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: May 24, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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You might want more information about what to do next.

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- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

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- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 770814**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

**EASYRENT REAL ESTATE SERVICES LTD, Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Vancouver, BC

Date of Hearing: May 19, 2011, by conference call.

Date of Decision: May 24, 2011

Attending:

For the Landlord: Sean (Shahram) Rafati, Property Manager (Landlord)

For the Tenant:

s.22

## **DECISION**

Dispute Codes      MNDC FF

### Preliminary Issues

At the outset of the hearing the Tenant confirmed that his tenancy has ended and he wished to amend his application for dispute resolution by withdrawing his requests to obtain an Order to have the Landlord make emergency repairs for health and safety reasons, to allow the tenant reduced rent for repairs, services, or facilities agreed upon but not provided, and for other reasons.

Based on the aforementioned I approve the Tenant's request to amend his application as this reduces the claim being sought against the Landlord. This amendment was considered pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing convened on March 22, 2011 and was adjourned to ensure both parties had fair opportunity to receive and respond to the evidence submitted by the other. The teleconference hearing reconvened for the present session on May 19, 2011. The Tenant is seeking a Monetary Order for compensation for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*. The Landlord testified that he had received all of the Tenant's evidence. The Tenant testified that he did not receive the most recent package of evidence sent by the Landlord in May 2011. The Landlord advised that this last evidence was sent May 11, 2011 via registered mail to the address that was listed on the receipt the Tenant submitted for his temporary accommodation in March 2011.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which began January 1, 2011 and was set to switch to a month to month tenancy after December 31, 2011. Rent was payable on the first of each month in the amount of \$2,425.00 and on December 28, 2010 the Tenant paid \$1,212.50 as the security deposit.

The Tenant advised that he has received the return of his full damage deposit in the amount of \$1,212.50 so he was no longer claiming this. The balance of his claim is \$10,412.16 and is comprised of the following items:

- \$1000.00 for rent March 5 - March 12, 2011 for alternate accommodation
- \$1,568.00 for rent March 12 to March 30, 2011 for alternate accommodation
- \$237.16 to cover the cost of hiring the mold expert and obtain their report
- \$340.00 for the cost to hire the moving company on March 10, 2011.
- \$2,417.00 for the cost of "furnishers" (sic) which had mold and were thrown out

The Tenant testified that on January 3, 2011 he e-mailed the Landlord to advise there was a dark spot on the window blind. There was no further communication with the Landlord about this spot. Then on February 28, 2011 he e-mailed the Landlord a photo of the ceiling directly above a window to advise there was the presence of mold in the rental unit which is seriously affecting his family's health. The Landlord did not respond to his e-mail until the next day, March 1, 2011, which is the date the Tenant had scheduled for a mold inspector to attend the unit. He had arranged for the mold inspector to come prior to notifying the Landlord. He believes he had found the mold inspector the same day he sent the Landlord the notification email, February 28, 2011, but he was not certain.

The Tenant claims the Landlord responded to his e-mail on March 1, 2011 and advised him he would be compensated. He told the Landlord he could no longer live there. The Landlord stated that he was checking with the Strata to determine responsibility. The Tenant argued that he could not be stuck in the middle of a fight between the Strata and the Landlord as this situation was affecting their health. He advised that he and his

sister had presenting health conditions which had symptoms of dry cough, runny nose, red eyes, and head ache. He now has a respiratory condition and his sister has sinusitis. They attended the hospital and then the next day they went to their family doctor. He provided a letter from his doctor which indicates that their symptoms were “highly suspicious of exposure to mould”.

The Tenant stated that when the Landlord did not respond to his requests to end the lease he contacted the owner directly. On March 8<sup>th</sup> the owner wrote him and told him it was okay for him to break the lease. It took the Landlord nine days to honour the owner’s decision and during that time the Landlord continued to try and delay the ending of the lease.

The Tenant had his lawyer write to the Landlord which included a request that no work be started in the rental unit until all of the Tenant’s property is removed and which also offered the Landlord the opportunity to settle this matter. The Landlord did not accept the offer to settle this matter however he did agree to cancel the lease as of March 16, 2011. The Tenant hired movers to remove his property on March 10, 2011 as supported by his evidence.

The Tenant is of the opinion that the Landlord was negligent by not informing them of the presence of mold at the outset of the tenancy, therefore he is seeking damages from January 3, 2011, when he first noticed the black spot on the blinds. The Tenant stated that he did not notice any changes in the apartment over time “appearance wise” and would not know what to look for because he did not know what mold was. Their symptoms did not start over night and it was not until he spoke with friends that they suggested they go to the doctor. The Tenant did not seek medical attention immediately and instead waited a couple of weeks until their symptoms got worse and then they went to the doctor.

I asked the Tenant why he would think to hire a mold inspector if he did not know what mold was. He stated that it was their friend who suggested that they hire a mold inspector. When I questioned when this conversation took place the Tenant initially stated it was immediately after the previous dispute resolution hearing and then he began to falter and stated that he was not sure of when this discussion occurred. When I questioned why the Tenant did not discuss this situation with the Landlord before hiring a mold inspector the Tenant advised that the Landlord took 25 days to replace a stove and he did not want to delay this situation because he needed to know for his own health. The Tenant stated that he hired the mold inspector, without the Landlord’s permission, out of his own good will.

The Landlord testified that the Tenant's testimony is comprised of stories taken out of context and does not include the full stories. He confirms receiving the Tenant's e-mail on February 28, 2011 claiming there was the presence of mold and that they responded less than 12 hours later, on March 1, 2011 advising they would hire an inspector; only to have the Tenant respond advising them he had hired an inspector and that it would be inspected that day.

The Landlord referred to the mold report provided by the Tenant and stated the report does not state the unit is uninhabitable. After reviewing the report the Landlord told the Tenant that they could not break the lease because the report did not state the unit was uninhabitable; therefore the Landlord requested a few days to address the situation.

Sometime around the third of March 2011 the Landlord received a notice to end tenancy from the Tenant that was dated February 28, 2011. He informed the Tenant the situation was not that serious and could be repaired prior to March 31, 2011 as it was not that expensive to repair. The Landlord informed the Tenant that if he could provide a doctor's note that stated he could not stay in the unit then they could discuss ending the tenancy but the note the Tenant provided made no reference to the Tenant occupying the unit.

The Landlord did not receive the mold report from the Tenant until March 2, 2011 and he had professionals attend the unit on March 3, 2011 to wash off the mold. This unit was professionally cleaned at the end of October 2010 and then stayed vacant until the Tenant occupied the unit in late December 2010. There was no presence of mold during that time and there is no mention of mold on the move-in inspection dated December 28, 2010.

The Landlord had a restoration worker attend the unit on March 11, 2011 because the Tenant had indicated they had vacated the property. However when the worker attended he found the Tenant's relatives inside the unit cooking and there was a lot of humidity in the unit. The unit was filled with furniture and there was no indication of anyone moving as there were no boxes in the process of being packed up.

The Landlord confirmed receipt of the letter sent by the Tenant's lawyer and stated they were following directions provided in that letter not to conduct work until the Tenant had vacated. They were not delaying in attending to this matter or ending the tenancy they were awaiting notice that the Tenant had vacated. They informed the Tenant that they had to have the opportunity to inspect the unit to determine if there was simply cosmetic damage or if the repair would require a full remediation. Then on March 15, 2011 they sent the Tenant an e-mail (a copy was provided in their evidence) where they confirmed

they were not saying “No” to the Tenant’s requests and they confirmed that their duty as property managers was to follow a due process and do things correctly.

The Landlord advised that in this case the Tenant simply does not like how they have to operate and does not understand the time frames required to operate their business. The Landlord has not been negligent in any way, rather it was the Tenant who went out and hired a specialist without consulting the Landlord first. The Owner does not say in his response to the Tenant that they would end the tenancy rather they said they would discuss it with the property manager. There is no misrepresentation on the part of the Landlord and they did not make the Tenant or his family suffer.

The repair costs were only \$2,500.00 and all of the work could have been performed with the Tenant still occupying the rental unit. The Tenant kept saying he had moved out yet the unit was still occupied. The Landlord questions the moving receipt provided by the Tenant dated March 10, 2011 as there is no way a moving company would move a fully furnished 3 level town house for only \$300.00. The Tenant notified the Landlord on March 16, 2011 that they have fully vacated the unit, the tenancy was ended March 17, 2011 and a move-out inspection was completed the following Monday, March 21, 2011.

The Landlord has refunded the Tenant’s full security deposit of \$1,212.50 and accepts responsibility to pay the Tenant \$237.16 for the cost of the mold report plus returning the rent for the period of March 17, 2011 to March 31, 2011.

In closing the Tenant states there was no one living in the rental unit as of March 5, 2011 and his furniture was moved out on March 10, 2011 which is supported by the copy of the invoice he provided in evidence.

### Analysis

The Landlord confirmed they sent their last package of evidence to an address provided on a receipt for temporary accommodations provided in evidence by the Tenant and did not sent it to the address provided by the Tenant during the previous hearing.

Based on the aforementioned I find the Landlord did not provide the Tenant with copies of their most recent evidence (May 2011) in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not received copies of the Landlords’ evidence served on May 11, 2011, I find that this evidence cannot be

considered in my decision. I did however consider the Landlord's testimony pertaining to that evidence and all evidence served to the Tenant prior to May 11, 2011.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord accepts responsibility to reimburse the Tenant \$237.16 for the cost of the mold report plus rent previously paid for the period of March 17, 2010 to March 31, 2011. Therefore I approve the Tenant's claim in the amount of **\$1,433.11** which is comprised of \$237.16 for the report fee plus \$1195.95 in rent (15 days x \$79.73 per day).

The remainder of the Tenants claim pertains to costs to stay in temporary accommodation, moving costs, furnishings that were disposed of, and return of rent for January and February 2011.

Based on the foregoing, the relevant evidence which consisted of, among other things, a detail listing of the Tenant's claim, numerous e-mails between the parties, medical reports, photos of prescription inhalers, a letter from a doctor, a copy of the mold report, photos of the widow blind and ceiling in the rental unit, and copies of receipts for items purchased, and on a balance of probabilities, I find as follows:

The evidence, which includes a picture of an inhaler displays that this prescription for the Tenant was filled on July 10, 2006, which proves the Tenant has a pre-existing respiratory condition. Furthermore the letter provided by the Tenant's doctor indicates their symptoms are "highly suspicious of exposure to mold" however there is no indication of where this exposure took place or over what period of time.

The restoration report confirms there is a presence of “visible fungal contamination” and then explains the process for remediation. This does not confirm the presence of mold or that the unit is uninhabitable.

After careful consideration of the evidence before me I find there to be insufficient evidence to meet the burden of proof that the Landlord and/or owner breached the *Residential Tenancy Act*, regulation or tenancy agreement. Furthermore I find the Tenant failed to mitigate his losses by moving out of the unit and incurring temporary living costs and moving cost. He could have chosen to be absent from the rental unit for only a couple of days, during the remediation, and then return to continue his tenancy upon completion. Based on the aforementioned I hereby dismiss the remainder of the Tenant’s claim, without leave to reapply.

The Tenant has not been primarily successful with his application; therefore I find he must bear the burden of his own application fee.

### Conclusion

The Tenant’s decision will be accompanied by a Monetary Order in the amount of **\$1,433.11**. This Order must be served upon the Respondent Landlord and may be enforced through Provincial Court 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: May 24, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 771817**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Nanaimo, BC

Date of Hearing: May 26, 2011, by conference call.

Date of Decision: May 27, 2011

Attending:

For the Landlord:

s.22

For the Tenant: No One

## **DECISION**

Dispute Codes      RI

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order to allow an additional rent increase above the legislated annual increase amount.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 15, 2011. Mail receipt numbers were provided in the Landlord's evidence. Each Tenant is deemed to be served the hearing documents on April 30, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the tenants despite them being served notice of today's hearing in accordance with the *Act*.

### Issue(s) to be Decided

1. Has the Landlord met the burden of proof that he has been faced with significant repairs or renovations that were unanticipated?
2. If so is the Landlord entitled to an Order to allow an additional rent increase above the legislated amount as a result of those unanticipated costs?

### Background and Evidence

The Landlord testified the rental house was built in approximately 1920 and he has owned the property since the summer of 2008. Prior to purchasing this property he had a building inspection completed however he did not have access to the report during the hearing and he did not provide a copy of it into evidence. He confirmed this property was purchased as a rental income property and upon possession he completed

approximately \$20,000.00 worth of renovations (flooring, wall repair and paint, new kitchen, and an addition of a laundry room) on the interior and built an exterior deck.

The current tenants are the first people he rented the property to after completion of the renovations. The tenancy agreement began in approximately September 2008. The current monthly rent is \$1,035.00 and on or before September 1, 2008 the Tenants paid \$975.00 as the security deposit. Rent was initially \$975.00 per month and the Landlord has issued only one rent increase during the entire tenancy bringing rent up to \$1,035.00. The increase was either on August 1, 2009 or August 1, 2010.

The Landlord confirmed that he has made his application to allow a \$70.00 per month rent increase because he has been faced with significant repairs to the rental property in 2010/2011 which included 1) repair of the chimney; 2) clean out and replacement of the sewer line; and 3) pest control services to deal with carpenter ants.

He advised the chimney needed to be repaired in April 2010 at a cost of \$470.00 after a wind storm ripped off a section of the chimney and the chimney cap. He confirmed that he has not done maintenance on the chimney or cap since owning the house and he did not know the age of sections which were damaged in the wind storm. He did have to replace the wood stove shortly after purchasing the house because the existing one was not CSA approved so in order for him to acquire property insurance he had to provide evidence that the wood stove was replaced with one that was CSA approved.

Then in January 2011 the Tenants called and advised the sewer was backing up into the house. Upon inspection it was determined that the sewer line running from the house to the street was blocked and damaged by tree roots to a point where one section had to be replaced. The Landlord has not conducted any prior maintenance on the sewer lines and he does not know of any work completed prior to his purchasing the property. He does not know how many years this property has been hooked up to the city sewer line but does know this is the "old part of town". The total cost of this repair was \$1,031.95.

The Landlord said he was informed of an infestation of insects and after inspection it was determined that there was a presence of carpenter ants. The house consists of main floor living with no upstairs and no basement, just a crawl space. The crawl space is half concrete and half dirt. The Landlord did not know if the ants were noted in the building inspection. He has had to pay for a pest control company to treat the property in 2010 and 2011.

In closing the Landlord stated that he also had to have the railings redone on the new deck because they were not installed at the proper width and a child could get through them. He had initially approached the Tenants with his request for this rent increase however they refused to agree. He has been absorbing these extra maintenance costs and feels he should be able to recoup them through an increase in the rent.

### Analysis

The Landlord has applied for a rent increase of \$70.00 per month which is a 6.764% increase. The current maximum allowable increase for 2011 is 2.3 % which in this case amounts to \$33.12 per month.

Section 43 (1) of the Act provides that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing.

Section 43(3) of the Act provides that in the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

The Regulation section 23 (1)(b) states that a landlord may apply under section 43 (3) of the Act *[additional rent increase]* if the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that (i) could not have been foreseen under reasonable circumstances, and (ii) will not recur within a time period that is reasonable for the repair or renovation;

Regulation section 23 (3)(h) provides that the director must consider whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year.

After careful consideration of the evidence before me I find, based on a balance of probabilities, the following:

- 1) Repair / replacement of a portion of the chimney and cap – after consideration of the age of the house, that a building inspection was completed just two years prior to the required repair, and no maintenance was performed on the chimney area for the two year period the Landlord has owned this property, I find this does not meet the test that this repair could not have been foreseen under reasonable circumstances. Had annual maintenance been performed on the chimney, the Landlord could have been alerted to the age, condition, and service repair needs

that were present and could have planned for this expenditure. Therefore on this ground I find there to be insufficient evidence to meet the burden of proof.

- 2) Clean out and replacement of the sewer line – after consideration of the evidence before me I find there to be insufficient evidence to prove the blockage of the sewer line could not have been foreseen under reasonable circumstances. Evidence such as the age of the house and its location in one of the oldest sections of the city supports an area with mature trees with roots that could cause drainage or sewage line problems. In the absence of the building inspection report and consideration that no maintenance had been performed on the drainage and sewer lines previous to the required repair, I find there to be insufficient evidence to meet the burden of proof.
- 3) Pest control services to deal with carpenter ants – the Landlord provided copies of two credit card payments to a pest control company on March 31, 2010 and March 29, 2011. There is no service address listed on these receipts nor is there a description of services provided. Furthermore if there was the presence of carpenter ants coming up through the crawl space area it is reasonable to conclude that this would have been indicated in the building inspection report completed just two years prior. If not, there is no evidence before me of regular maintenance completed to the crawl space area to prevent such an infestation. The requirement of a pest control service for a rental property located on an Island is not an unexpected expense and therefore does not meet the test that the cost could not have been foreseen. Based on the aforementioned I find this does not meet the burden of proof for this application.

Having found all three circumstances of repair not to have met the burden of proof I find the Landlord's application for an additional rent increase must fail.

The *Residential Tenancy Regulation # 14* stipulates that if a landlord applies for an additional rent increase and the application is not successful, the landlord may give a notice of rent increase to one or all tenants of rental units in the residential property for a rent increase of an amount that is not more than the legislated allowable amount. For 2011 the legislated amount is 2.3 % which in this case amounts to an increase of \$33.12 per month.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Landlord's application for an additional rent increase, without leave to reapply.

I have considered only the application before me and I have not made findings of fact or law related to any other matters pertaining to the *Residential Tenancy Act* or this tenancy.

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: May 27, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 771817**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Nanaimo, BC

Date of Hearing: May 26, 2011, by conference call.

Date of Decision: May 27, 2011

Attending:

For the Landlord:

s.22

For the Tenant: No One

## **DECISION**

Dispute Codes      RI

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order to allow an additional rent increase above the legislated annual increase amount.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 15, 2011. Mail receipt numbers were provided in the Landlord's evidence. Each Tenant is deemed to be served the hearing documents on April 30, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the tenants despite them being served notice of today's hearing in accordance with the *Act*.

### Issue(s) to be Decided

1. Has the Landlord met the burden of proof that he has been faced with significant repairs or renovations that were unanticipated?
2. If so is the Landlord entitled to an Order to allow an additional rent increase above the legislated amount as a result of those unanticipated costs?

### Background and Evidence

The Landlord testified the rental house was built in approximately 1920 and he has owned the property since the summer of 2008. Prior to purchasing this property he had a building inspection completed however he did not have access to the report during the hearing and he did not provide a copy of it into evidence. He confirmed this property was purchased as a rental income property and upon possession he completed

approximately \$20,000.00 worth of renovations (flooring, wall repair and paint, new kitchen, and an addition of a laundry room) on the interior and built an exterior deck.

The current tenants are the first people he rented the property to after completion of the renovations. The tenancy agreement began in approximately September 2008. The current monthly rent is \$1,035.00 and on or before September 1, 2008 the Tenants paid \$975.00 as the security deposit. Rent was initially \$975.00 per month and the Landlord has issued only one rent increase during the entire tenancy bringing rent up to \$1,035.00. The increase was either on August 1, 2009 or August 1, 2010.

The Landlord confirmed that he has made his application to allow a \$70.00 per month rent increase because he has been faced with significant repairs to the rental property in 2010/2011 which included 1) repair of the chimney; 2) clean out and replacement of the sewer line; and 3) pest control services to deal with carpenter ants.

He advised the chimney needed to be repaired in April 2010 at a cost of \$470.00 after a wind storm ripped off a section of the chimney and the chimney cap. He confirmed that he has not done maintenance on the chimney or cap since owning the house and he did not know the age of sections which were damaged in the wind storm. He did have to replace the wood stove shortly after purchasing the house because the existing one was not CSA approved so in order for him to acquire property insurance he had to provide evidence that the wood stove was replaced with one that was CSA approved.

Then in January 2011 the Tenants called and advised the sewer was backing up into the house. Upon inspection it was determined that the sewer line running from the house to the street was blocked and damaged by tree roots to a point where one section had to be replaced. The Landlord has not conducted any prior maintenance on the sewer lines and he does not know of any work completed prior to his purchasing the property. He does not know how many years this property has been hooked up to the city sewer line but does know this is the "old part of town". The total cost of this repair was \$1,031.95.

The Landlord said he was informed of an infestation of insects and after inspection it was determined that there was a presence of carpenter ants. The house consists of main floor living with no upstairs and no basement, just a crawl space. The crawl space is half concrete and half dirt. The Landlord did not know if the ants were noted in the building inspection. He has had to pay for a pest control company to treat the property in 2010 and 2011.

In closing the Landlord stated that he also had to have the railings redone on the new deck because they were not installed at the proper width and a child could get through them. He had initially approached the Tenants with his request for this rent increase however they refused to agree. He has been absorbing these extra maintenance costs and feels he should be able to recoup them through an increase in the rent.

### Analysis

The Landlord has applied for a rent increase of \$70.00 per month which is a 6.764% increase. The current maximum allowable increase for 2011 is 2.3 % which in this case amounts to \$33.12 per month.

Section 43 (1) of the Act provides that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing.

Section 43(3) of the Act provides that in the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

The Regulation section 23 (1)(b) states that a landlord may apply under section 43 (3) of the Act *[additional rent increase]* if the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that (i) could not have been foreseen under reasonable circumstances, and (ii) will not recur within a time period that is reasonable for the repair or renovation;

Regulation section 23 (3)(h) provides that the director must consider whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year.

After careful consideration of the evidence before me I find, based on a balance of probabilities, the following:

- 1) Repair / replacement of a portion of the chimney and cap – after consideration of the age of the house, that a building inspection was completed just two years prior to the required repair, and no maintenance was performed on the chimney area for the two year period the Landlord has owned this property, I find this does not meet the test that this repair could not have been foreseen under reasonable circumstances. Had annual maintenance been performed on the chimney, the Landlord could have been alerted to the age, condition, and service repair needs

that were present and could have planned for this expenditure. Therefore on this ground I find there to be insufficient evidence to meet the burden of proof.

- 2) Clean out and replacement of the sewer line – after consideration of the evidence before me I find there to be insufficient evidence to prove the blockage of the sewer line could not have been foreseen under reasonable circumstances. Evidence such as the age of the house and its location in one of the oldest sections of the city supports an area with mature trees with roots that could cause drainage or sewage line problems. In the absence of the building inspection report and consideration that no maintenance had been performed on the drainage and sewer lines previous to the required repair, I find there to be insufficient evidence to meet the burden of proof.
- 3) Pest control services to deal with carpenter ants – the Landlord provided copies of two credit card payments to a pest control company on March 31, 2010 and March 29, 2011. There is no service address listed on these receipts nor is there a description of services provided. Furthermore if there was the presence of carpenter ants coming up through the crawl space area it is reasonable to conclude that this would have been indicated in the building inspection report completed just two years prior. If not, there is no evidence before me of regular maintenance completed to the crawl space area to prevent such an infestation. The requirement of a pest control service for a rental property located on an Island is not an unexpected expense and therefore does not meet the test that the cost could not have been foreseen. Based on the aforementioned I find this does not meet the burden of proof for this application.

Having found all three circumstances of repair not to have met the burden of proof I find the Landlord's application for an additional rent increase must fail.

The *Residential Tenancy Regulation # 14* stipulates that if a landlord applies for an additional rent increase and the application is not successful, the landlord may give a notice of rent increase to one or all tenants of rental units in the residential property for a rent increase of an amount that is not more than the legislated allowable amount. For 2011 the legislated amount is 2.3 % which in this case amounts to an increase of \$33.12 per month.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Landlord's application for an additional rent increase, without leave to reapply.

I have considered only the application before me and I have not made findings of fact or law related to any other matters pertaining to the *Residential Tenancy Act* or this tenancy.

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: May 27, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 245046**  
**Additional File(s):245014**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**DEVON PROPERTIES LTD and ALEX CREIGHTON (Agent),**  
**Landlord(s),**

Applicant(s)/Respondent(s)

And

s.22

**Tenant(s),**

Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Victoria, BC

Date of Hearing: May 31, 2011, by conference call.

Date of Decision: May 31, 2011

Attending:

For the Landlord: Alexandra Creighton

For the Tenant: s.22

## DECISION

Dispute Codes      O FF  
                             LRE FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order to allow the Landlord access to the rental unit to conduct a quarterly inspection and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking an Order to suspend or set conditions on the Landlord's right to enter the rental unit, and to recover the cost of the filing fee from the Landlord.

The parties attended the teleconference hearing, acknowledged receipt of the hearing documents provided by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order to allow the Landlord entry into the rental unit as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain an Order to suspend or set conditions on the Landlord's right to end the rental unit as a result of that breach?

### Background and Evidence

I heard undisputed testimony that the Tenant has occupied the rental unit since May 1, 2004. The current monthly rent is payable on the first of each month in the amount of \$1,907.00 and on May 1, 2004 the Tenant paid \$875.00 as the security deposit. The

current Landlord is a property management company who has looked after this property for the current owner since approximately October 2010.

The Tenant testified that the new property management company's policy of quarterly inspections of the rental unit is unreasonable. She stated that she had an implied arrangement with her previous landlord that there would only be a move in and a move out inspection. She had informed the new property manager of her need for privacy however they have insisted on completing the four inspections in accordance with their company policy.

The Tenant confirmed there has been no breach of the *Residential Tenancy Act*, regulation or her tenancy agreement. She is however seeking an order based on what is reasonable, as noted in policy. She emphasized that this procedure of quarterly inspections is a "new and unusable thing" that is severe enough to warrant her providing her notice to end the tenancy, and therefore should be prevented.

After a brief discussion the Tenant confirmed she was referring to the *Residential Tenancy Policy Guideline* which pertains to the loss of quiet enjoyment. She is of the opinion that the fundamental basis for all legislation and policy is "common sense" and therefore by defining what is reasonable for this policy would support her request. She is seeking an order to have the Landlord restricted to one inspection per year as this is what she finds to be reasonable.

The Landlord testified and acknowledged that while section 29 of the Act allows them to conduct monthly inspections it is not their intention to enforce this. As Landlords they do have an obligation to manage the property in a manner that meets their obligations to the owner. It is their company policy to conduct quarterly inspections, four times per year, therefore she is not prepared to discuss a change to their policies and will not consider changing this inspection schedule to once per year. They have attempted to work with the Tenant to reach a mutually agreed upon date for this inspection however the Tenant has chosen to come to dispute resolution instead of agreeing to a date.

The Landlord advised that they have not breached the Act and are requesting that the Tenant's application be denied. They do not feel they should have their rights varied simply because the Tenant feels an inspection is unreasonable. They also do not feel they should have to suffer a loss for the cost of the filing fee to enforce their rights under the Act.

In closing the Landlord advised that they would be willing to amend the June 3, 2011 inspection date they had requested on their application to a date next week if it worked

better for the Tenant. The Landlord clarified that this inspection is not like an in depth home inspection that is usually conducted when someone purchases a house; rather it is a general walk through that should take no more than fifteen minutes.

The Tenant advised that Thursday June 9, 2011 at 8:30 a.m. would work better for her. The Landlord was in agreement to this date.

### Analysis

I have carefully considered the testimony and evidence before me which included, among other things, copies of written communications between the parties between March 23, 2011 and April 12, 2011, and a copy of the tenancy agreement.

### **Tenant's Application**

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit **subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];** (emphasis added by the writer).
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The evidence supports the Landlord has not breached the *Residential Tenancy Act*, regulation, or tenancy agreement.

The Tenant relies on the *Residential Tenancy Policy Guideline # 6 Right to Quiet Enjoyment* as support for her request to set conditions on the Landlord's right to enter the rental unit as she finds quarterly inspections of the rental property to be unreasonable and therefore when considering the common sense of the policy it would be reasonable for me to set restrictions on the Landlord's right to enter the property.

*Policy Guideline # 6* provides an explanation of what a right to quiet enjoyment is and makes specific reference to a landlord's right to enter the rental unit as follows:

The Residential Tenancy Act and Manufactured Home Park Tenancy Act (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, **subject to the landlord's right of entry under the Legislation, and** (emphasis added by the writer)
- use of common

*Policy Guideline # 6* further states that in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

I do not accept the Tenant's submission that by simply defining reasonableness as used in *Policy Guideline # 6* would meet the burden of proof to reduce or vary a landlord's right to access a rental unit; a right that is prescribed under the *Residential Tenancy Act*.

Based on the aforementioned, I find there to be insufficient evidence to meet the burden of proof that the Landlord, by enacting their right to inspection the unit in accordance with section 29 of the *Act*, has breached the covenant of quiet enjoyment. Therefore I dismiss the Tenant's request to limit the Landlord's access to the rental unit, without leave to reapply.

The Tenant has not been successful with her application; and therefore must bear the burden of the cost of her application fee.

### **Landlord's Application**

The evidence supports the Tenant has refused the Landlord access to the rental unit and has refused to work with the Landlord to find a mutually agreed upon date and time for the Landlord to conduct the first of four, quarterly inspections of the rental unit. Based on the aforementioned I find the Tenant has breached section 29(2) of the *Act*, as listed below:

Section 29 of the *Act* provides:

- (1) a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Based on the aforementioned, I find the Landlord has met the burden of proof to establish the Tenant has breached the Act. Therefore I grant the Landlords request to issue an Order to access the rental unit on Thursday June 9, 2011 at 8:30 a.m. to conduct the first of four quarterly inspections.

This decision is to be considered the Tenant's notice of entry, for the Landlord's June 9, 2011 inspection. The Landlord is required to provide notice of all future inspections in accordance with section 29 of the Act.

I caution the Tenant that future breaches of the *Act* may constitute reasons for the Landlord to issue notice to end this tenancy for cause.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY ORDER the Landlord is granted access to the rental unit on **Thursday June 9, 2011 at 8:30 a.m.** to conduct an inspection of the rental unit, pursuant to section 62 of the *Residential Tenancy Act*.

I HEREBY ORDER the Tenant not to prevent the Landlord's access on Thursday June 9, 2011 in any manner, pursuant to section 62 of the *Residential Tenancy Act*.

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$50.00**, pursuant to section 67 of the *Residential Tenancy Act*. This Order must be served upon the Tenant and may be enforced through Provincial Court 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: May 31, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 771943**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**0697190 B.C. LTD., Landlord(s),**

Applicant(s)

And

Respondent(s)

Regarding a rental unit at:  
Trail, BC

s.22

Date of Hearing: May 10, 2011, by conference call.

Date of Decision: June 6, 2011

Attending:

For the Landlord:

s.22

Landlord (1)

s.22

Landlord (2)

s.22

Landlord (3)

For the Tenant:

s.22

Agent for the Tenants

s.22

## **DECISION**

Dispute Codes      RI

### Introduction

This hearing dealt with an Application for an Additional Rent Increased filed by the Landlords.

The parties appeared at the teleconference hearing. Each Tenant was canvassed and confirmed that they wished to be represented by their Agent as named on the cover page of this decision. Each Tenant named as Respondent in this application is listed on the cover page with their unit number of their rental unit displayed in brackets behind their name. The Tenant from unit (11) confirmed the correct spelling of her first name and requested that it be displayed correctly in my decision. The Tenants were advised that they could listen in on the teleconference hearing and their Agent would be the only person providing oral testimony during the hearing. Each Tenant would be given instructions at the end of the hearing on how they could provide their final comments in writing.

The parties acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Landlords met the burden of proof to obtain an Order to increase the Respondent Tenants' monthly rent over and above the legislated amount.

### Background and Evidence

Landlord (1) began the testimony by confirming they are seeking an Order to increase rents of the 1 bedroom units to \$525.00 per month, 2 bedroom units to \$595.00 per month, and 3 bedroom units to \$795.00 per month as the 3 bedroom units are 1200 square feet. He confirmed their application was based on the following three reasons:

- A) Rent is lower than comparable units or sites

- B) They have completed significant repairs or renovations
- C) They have suffered an extraordinary increase in operating costs

In support of their application for reasons that rent is lower than comparable units or sites Landlord (1) referenced their evidence which included three pages of advertisements for apartments for rent in their area. The first page included a listing for two apartments listing rents as: 1 bedroom \$750.00; 2 bedrooms \$800.00; and 3 bedrooms \$900.00. The second page included a listing for one apartment building listing rates for 1 and 2 bedrooms between \$600 - \$850 (depending on services and size of suites) [sic]. The third page consisted of a photocopy of a newspaper classified section dated November 26, 2010 where the Landlord had put a bracket around five advertisements which list rents ranging from \$650 to \$950. He pointed out that some of these advertisements were for a town home.

Landlord (1) clarified that he had erred in his written submission where he originally stated that the Landlord pays for electricity. He wanted to clarify that they pay for hot water and heat and not electricity but he also wanted to add that cable television is paid for by the Landlord.

He then moved onto the second reason for making this application and stated that they have completed significant repairs or renovations when they redid the sewer system. They had past sewer issues in the apartment building where there was a very old pump having to pump the septic. This pump actually shut down one time. They purchased a secondary pump, created a new parking lot, and removed the swimming pool because it was a hazard. He confirmed this property had an apartment building and town houses.

Sometime after purchasing the property the owners decided to change the town houses into strata units. They began the required work back in late 2007. Landlord (1) stated that the sewer project was to separate the town houses from the apartment sewer and to separate the hot water. When I asked what evidence was before me to support that there were previous issues with the apartment sewer Landlord (1) stated that I should trust his word that the apartments benefited from the sewer. The old system had the sewage being pumped into the apartment and then out and after the new system was installed it pumped the town house sewage into the river. They are also working on a storm sewer project that will assist in the reduction of erosion on the bank of the river. Both the apartment and the town houses are built on the bank of the river.

Landlord (1) continued his testimony by moving onto the third reason for making their application which is they have suffered an extraordinary increase in operating costs. He advised that ever since they have owned this property from about 2005 or late 2004

they have suffered a loss and this year it was their biggest loss. He referred to the financial statements provided in evidence and noted that in 2007 they lost \$47,000.00 and in 2008 their loss was \$34,000.00. He confirmed these financial statements represent both the apartment costs and the town house costs, including all of the work which had to be completed in order to have the town houses converted to strata units. He estimates that 60% of the items on this financial statement represent the apartment and 50% represents the town houses because there are 21 apartments.

Landlord(2) testified and stated that he was concerned that I attacked the veracity of Landlord (1) when I asked what evidence I had before me to support his statement that the apartment was experiencing problems with the septic system. I explained to Landlord (2) that the Landlords bear the burden of proof to support their application and they are required to point me to their evidence when providing testimony, therefore I was not attacking the veracity of Landlord (1); rather I was performing the duties of my job in managing the hearing process.

Landlord (2) continued by stating the sewer problems were major. The septic from the town houses was not pumped into the apartment but were pumped into the same holding basin as septic from the apartment was. He also wanted to clarify that the sewage is not being pumped into the river; rather they tied their new sewage lines into a city line that runs parallel to the river bank.

Landlord (3) was then given the opportunity to provide evidence. He advised that they had ownership of the buildings since June 2004.

The Tenants' Agent (later referred to as the Agent) provided his testimony and began by responding to the comparable rental units provided by the Landlords. The first two apartment buildings referenced by the Landlords are the two highest priced apartments in their area and cannot be compared to their units as they are newer, nicer looking, have modern security, and elevators.

Their apartment building is about fifty years old and has no security. Anyone can walk right into the building. There are three other older buildings in their area that would be comparable to their units however when he contacted the managers of those buildings they did not want to tell him what their long term tenants are currently paying. He argued that all of the Tenants named in this dispute are long term tenants so of course their rents will be lower than brand new tenants because the Landlords can charge the new tenants anything they want. He also stated that not all the 3 bedroom units are 1,200 square feet, only a few are. He questioned why they would have to pay more

because the Landlords either failed to issue annual rent increases or issued them and chose to rescind them as they did on December 17, 2010.

The Agent stated that he has resided at this property for over 32 years and in that time he is aware of only one time that the sewer backed up into the apartment building. He has seen where people in the town houses have plugged their systems by flushing things they should not have, but there were no other problems.

He argued that the Landlords increase for repairs or renovations all have to do with their plan to change the town houses to strata and that work began about three years ago. He said that is the only reason the sewer system was changed because they were required to have everything separate for strata units. As for removal of the pool, he was the caretaker of the pool and it was never a hazard. They simply wanted it gone for the strata conversion.

The Agent referred to the financial statements and noted that the accountant's covering letter includes the following two statements:

“...in respect of these financial statements and according, I express no assurance thereon.”

“Readers are cautioned these statements may not be appropriate for their purposes”.

He questioned if the large expenses were related to costs incurred by the resident manager who was stealing from the Landlords. They informed the Landlords on several occasions about the manager stealing however the Landlords chose to let him stay on until long after he had cost the Landlords a large amount of money.

Furthermore he feels Landlord (2) was harassing people into agreeing to the rent increase prior to this hearing. He states that Landlord (2) approached them and if they refused to sign agreement of rent increase then he would call them several times in the evening trying to convince them to sign. Two Tenants that signed have since filed applications for dispute resolution. The Agent asked that I refer to his written statement for the rest of his submission as he was beginning to be upset about this matter.

Landlord (1) responded by stating they had issued rent increases in the past and the latest one was July 2009 and had issued increases in most of the previous years. He confirmed there were some mismanagement issues by their caretaker which they have since taken care of.

Landlord (3) confirmed that since owning the property in 2004, they have implemented rent increases in 2006, 2007, and 2009.

Landlord (2) responded to the Agent's comments about their accountant's covering letter stating that the Agent is an accountant so should be aware of declarations made by accountants when the statements are unaudited. He commented on the increase in management fees (\$30,000.00) and repairs and maintenance fees (\$120,000) and confirmed these were costs associated with the work done to the sewer system and making the town houses ready for strata. He stated that he did not harass the Tenants into signing a rent increase. He never approached anyone more than twice.

Landlord (1) confirmed the strata work commenced in 2007 and advised the \$39,000 in utilities and telephone consists of natural gas, electricity, water, and sewage. He also stated that about \$6,700.00 of that is for cable television which is provided to the Tenants for free.

In closing Landlord (3) confirmed the sewage costs were incurred to acquire strata title but that the apartment still benefited from this project. Landlord (2) clarified that the apartments used as comparables were not all newer units they just look similar to newer units.

In his closing remarks the Agent stated that those other units are nice and clean, have security systems and elevators. Most of the Tenants named in this application are long term tenants, some as long as 37 or 38 years so of course they would not be paying current rent. You will not find tenants who all pay the same rent because they start their tenancies at different times. It is not the Tenants fault that the Landlords did not issue rent increases every year. He questions why they did not listen to the Tenant's complaints about the caretaker stealing and asked if this is where they really lost their money and if so why would the Tenants have to pay for that.

After the closing remarks the Tenants were advised that they had one opportunity to provide a written response to the Landlords' testimony. Their response must be provided to their Agent on or before May 18, 2011. The Agent is required to forward the written statements to the *Residential Tenancy Branch* and Landlord (1) no later than May 18, 2011.

The Landlords have one opportunity to provide a written response to the Tenants statements. The Landlord's response is to be sent to the *Residential Tenancy Branch* and the Agent, with enough copies for each Tenant, no later than May 30, 2011.

### Analysis

As per the instructions listed above the Tenants and their Agent submitted additional written submission on May 16, 2011 which consisted of: (1) a three page typed submission from the Agent; and (2) a four page submission from the Tenant in unit 3; and (3) a one page written submission from the Tenant in unit 12; and (4) a one page typed submission from the Tenant in unit 11; and (5) a one page typed submission from the Tenant in unit 18; and (6) three groups of photographs taken of (a) the Tenants' rental building The Edgewater; and (b) photos from the two comparable buildings used by the Landlords The Brentwood and The Francesco's.

The Landlords' final submission consisted of a two page typed submission that was issued in response to the Tenants' submission and was sent to the *Residential Tenancy Branch* May 27, 2011.

I have carefully considered the foregoing testimony, all relevant written submissions, and the photographic evidence.

Section 43 (3) of the Act provides in the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

The *Residential Tenancy Regulation 23 (1)* provides that a landlord may apply for under section 43 (3) of the Act *[additional rent increase]* if one or more of the following apply:

**(a)** after the rent increase allowed under section 22 *[annual rent increase]*, the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

**(b)** the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

- (i) could not have been foreseen under reasonable circumstances, and
- (ii) will not recur within a time period that is reasonable for the repair or renovation;

**(c)** the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

In this case the Landlords have made application for an additional rent increase under sections 23(1) (a), (b), and (c), as listed above, for eleven units out of a total of twenty one units. In this instance, the Landlords have the burden to prove they meet the requirements for being granted an additional rent increase as set forth in the *Residential Tenancy Regulation* and the *Residential Tenancy Policy Guideline # 37*.

Section 23 (2) of the *Residential Tenancy Regulation* states that an additional rent increase applied for under paragraphs (b), (c), or (d) the landlord must make a single application to increase the rent for ***all rental units in the residential property by an equal percentage amount***. (Emphasis added by me)

In the matter before me the Landlords have sought three different amounts of increase and have applied for only eleven of the twenty one units. Therefore I find the Landlords' application must fail under sections 23(1) (b) and (c) as per Section 23 (2) of the *Residential Tenancy Regulation*.

The third reason the Landlords applied for an additional rent increase was under section 23(1)(a) of the *Regulation*, which provides that after the rent increase allowed under section 22 [*annual rent increase*], the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit.

The Landlords provided testimony that they have owned the property since 2004 and have implemented rent increases in 2006, 2007, and 2009. The Tenants provided opposing evidence that they have received rent increases in 2006, 2007, 2008, 2009, and 2010 however the 2010 was rescinded by the Landlords after it was issued.

The Landlords relied solely on their testimony to support that the units used for comparison are comparable units to those eleven they have made application for rent increase. They stated that their three bedroom units were much larger, approximately 1200 square feet, and their building was of the same era and condition as the two comparable units used. In their final written submission they state "Long term rents in other buildings in (city name) are not market rates. The best comparison to market rates is the actual rates we are getting in this building."

The Tenants provided opposing testimony and photographic evidence to support their rental property is not of the same condition or state of repair as those used for comparison by the Landlords. Specifically they provided photographic evidence to

support their testimony that the comparable units are more modern with elevators, are completely secured premises, and are clean and well maintained. They provided photographic evidence to support their units are located in an unsecure building that has no elevator and in some areas such as hallways and lawns are in various states of disrepair. Furthermore the Tenants noted that the two buildings used as comparables are the two most expensive rental properties in the area.

Section 37 of the *Residential Tenancy Policy Guideline #37* states that additional rent increases under the section of “Significantly lower rent” will be granted only in **exceptional circumstances** and that it is not sufficient for a landlord to claim a rental unit(s) has a significantly lower rent that results from the landlord’s recent success at renting out similar units at a higher rate.

As noted on the Landlords’ application they have applied for rent increases as follows:

#### SECTION “E”: RENT LOWER THAN COMPARABLE UNITS OR SITES

| Rent Before Increase | # of Units | Permitted Rent Increase | Comparable Rent | Additional Increase Requested | % of Increase Requested | [sic] means copied as written |
|----------------------|------------|-------------------------|-----------------|-------------------------------|-------------------------|-------------------------------|
| 439                  | 1          | 10.10                   | 525             | 75.90                         | 20%                     | [sic]                         |
| 494.4                | 5          | 11.37                   | 595             | 89.23                         | 20%                     | [sic]                         |
| 568                  | 6          | 13.03                   | 798             | 213.94                        | 40%                     | [sic]                         |

The above information as taken from the Landlords’ application would not meet the requirements of the Act as some of the amounts listed as the current allowable 2.3 % increase have been rounded up, which would be a contravention of section 43(1)(a) of the Act. Also the percentages applied for do not equal the additional increases requested. I have created a table below which lists the corrected amounts in italic and bold font.

| Rent Before Increase | # of Units | Permitted Rent Increase          | Comparable Rent | Additional Increase Requested | % of Increase Requested | Corrected in <i><b>Italic Bold</b></i> |
|----------------------|------------|----------------------------------|-----------------|-------------------------------|-------------------------|--|
| 439                  | 1          | <del>40.10</del><br><b>10.09</b> | 525             | 75.90<br><b>87.80</b>         | <b>17.29%</b><br>20%    | Corrected                              |
| 494.4                | 5          | 11.37                            | 595             | 89.23<br><b>98.88</b>         | <b>18.05 %</b><br>20%   | Corrected                              |
| 568                  | 6          | <del>43.03</del><br><b>13.06</b> | 798             | 213.94<br><b>227.20</b>       | <b>37.666 %</b><br>40%  | Corrected                              |

The onus lies with the Landlord to provide accurate information on their application. In the presence of contradictory information on the application for additional rent increase it is unclear if the Landlords are seeking additional rent increases of \$75.90, \$89.23, and \$213.94 based on the amounts listed under additional increase requested in section "E" of the application; or if they are seeking increases of \$87.80 \$98.88, \$227.20 based on the percentages listed.

Also, the Landlords have indicated they are seeking increases for twelve units above and only provided information pertaining to eleven units. The Landlords have completed section "K" of the application listing the eleven units, their current rent, and the amounts requested as an increase. I note that there are nine different "current rent" amounts listed in section "K" while there are only three indicated in section "E" above, and the percentage amounts do not equal 20% or 40%.

In the presence of opposing evidence provided by the Tenants and in the presence of contradictory information provided on the Landlords' application, I find the Landlords have provided insufficient evidence to meet the burden of proof that the rents for the eleven tenants listed in the application, are significantly lower than comparable units. Based on the aforementioned I find the Landlords' application must fail under section 23(1)(a) of the *Residential Tenancy Regulation*.

### Conclusion

I HEREBY DISMISS the Landlords' application for additional rent increase, without leave to reapply.

Having dismissed the Landlords' application for additional rent increase, the Landlord is at liberty to issue a rent increase for 2011, in accordance with the legislated amount of 2.3 %, pursuant to the *Residential Tenancy Policy Guideline # 37*.

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: June 6, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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- How and when to enforce a monetary order:  
Fact Sheet RTB-108: Enforcing a Monetary Order
- How and when to have a decision or order clarified or corrected:  
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
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Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

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- Victoria: 250-387-1602
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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 775451**  
**Additional File(s):775440**

In the matter of the *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77., as amended

Between

s.22

s.22 , Tenant(s),

Applicant(s)

And

**STERLING MANAGEMENT SERVICES LTD, Landlord(s),**  
Respondent(s)

s.22

s.22

FORT ST JOHN, BC

Date of Hearing: June 20, 2011, by conference call.

Date of Decision: June 20, 2011

Attending:

For the Landlord: Chrystal Herman, Agent

For the Tenant: No One

## **DECISION**

Dispute Codes      CNLC FF

### Introduction

This hearing dealt with Applications for Dispute Resolution filed by a Tenant and joined by thirteen subsequent Tenant applications to cancel a notice to end tenancy issued by the Landlord who intends to convert the manufacture home park to another use.

No one appeared at the teleconference hearing on behalf of the applicant Tenants; however the Agent for the Respondent Landlord appeared.

### Issue(s) to be Decided

1. Has a Notice to End Tenancy been issued and served in accordance with the *Manufactured Home Park Tenancy Act*?

### Background and Evidence

The Landlord's Agent appeared and advised that the Landlord did not have the required permits in place so he issued a memo to advise all tenants that the Notice to End Tenancy was being withdrawn. She advised the memo was mailed to each Tenant, a copy was posted to each Tenant's door, and a copy was listed in the local newspaper.

### Analysis

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

Section 54 of the *Manufactured Home Park Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this

case, the hearing was scheduled for an oral teleconference hearing. In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have not presented the merits of their application and the applications are dismissed.

The Tenants have not been successful with their applications; therefore they must bear the burden of the cost to file their applications.

Conclusion

I HEREBY DISMISS the Tenants' applications, 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 *Manufactured Home Park Tenancy Act*.

Dated: June 20, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 776602**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Kitimat, BC

Date of Hearing: September 19, 2011, by conference call.

Date of Decision: September 19, 2011

Attending:

For the Landlord: No One

For the Tenant: No One

## **DECISION**

Dispute Codes      DRI

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute a rent increase.

No one was in attendance for either the Landlord or the Tenant.

### Issue(s) to be Decided

1. Was a rent increase issued in accordance with Section 41 of the Act?

### Background and Evidence

There was no additional evidence or testimony provided as there was no one in attendance at the scheduled hearing.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenant and respondent Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant or respondent Landlord called into the hearing during this time. Based on the aforementioned I find that the Tenant has not presented the merits of their application and the application is hereby dismissed with leave to reapply.

Conclusion

**I HEREBY DISMISS** the Tenant's application, with 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: September 19, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 782084**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

West Vancouver, BC

Date of Hearing: November 21, 2011, by conference call.

Date of Decision: November 21, 2011

Attending:

For the Landlord:

s.22

For the Tenant:

s.22

## **DECISION**

Dispute Codes      OPB O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for breach of an agreement, for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation, tenancy agreement, and or an agreement with the Landlord?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenants affirmed they received the hearing documents however they did not receive copies of the Landlord's evidence.

The parties agreed that the Tenants have occupied the rental unit since 2009 and that they entered into a second fixed term tenancy agreement that began on February 1, 2011. Rent is payable on the first of each month in the amount of \$3,200.00 and on February 18, 2009 the Tenants paid \$1,600.00 as the security deposit and \$1,600.00 as the pet deposit.

The Landlord confirmed that both options for what was to happen at the end of the fixed term of October 31, 2011 were selected on the tenancy agreement. She advised that she had put her residence up for sale and that she had informed the Tenants she wanted to live in the rental unit if her house sold but that she would be willing to continue the tenancy or enter into another agreement if her house did not sell. Her

house has since sold so she wants to take back possession of the rental unit as soon as possible. The purchasers get possession of her house on January 31, 2012.

The Tenants stated that they were under the impression that their tenancy would continue on a month to month basis after October 31, 2011, just as their first agreement had. They stated that their first agreement was completed in the same format with both options selected on what would happen after the end of the fixed term and they believe this new tenancy agreement was simply an amended photocopy of their original agreement.

The Tenants advised they entered into this second agreement in February 2011 and they were not told about the Landlord selling her residence until July 2011. Then on October 14, 2011 they received a call from the Landlord telling them her house had sold and they needed to move no later than December 2011 to allow the Landlord time to renovate the rental unit s.22 They stated that the Landlord has already had several contractors attend the unit to provide her will information about making the unit more suitable s.22 Then the Landlord requested that they sign a mutual agreement to end the tenancy which they believe is her attempt to get out of paying them the one month's compensation that they are entitled to receive if the Landlord wants the property for her own use.

The Landlord confirmed she wants the property s.22 and her to reside in and s.22 She is of the opinion that the way she completed the tenancy agreement allows her to regain possession of the rental unit when she requests if she chooses not to extend the time period of the tenancy.

### Analysis

The Tenants affirmed they did not get served with copies of the Landlord's evidence which is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenants have not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

When applying for an Order of Possession for breach of an agreement, the applicant bears the burden of proof that an agreement between the parties was breached.

Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The evidence supports that the tenancy agreement was completed for a fixed term tenancy which at the end of the fixed term would both i) continue on a month to month basis or another fixed length of time; and ii) the tenancy ends and the tenancy must move out of the residential unit.

After careful consideration of the evidence before me I find the terms of the tenancy agreement to be unclear, therefore in accordance with section 6(3)(c) of the Act they are unenforceable and this tenancy is a month to month tenancy.

If the Landlord wishes to end this tenancy for her own use of the property, the Landlord is at liberty to serve the Tenants with a 2 Month Notice to End Tenancy for landlord's use, on the prescribed form, and provide the Tenants with compensation equal to one month's rent pursuant to sections 49 and 51 of the Act.

As stated in the hearing, I have also included sections 28 and 29 of the Act at the end of this decision.

The Landlord has not been successful with her application, therefore I decline to award recovery of the \$50.00 filing fee.

### Conclusion

I HEREBY DISMISS the Landlord's application.

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: November 21, 2011.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for information about:

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 780873**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Richmond, BC

Date of Hearing: December 12, 2011, by conference call.

Date of Decision: December 12, 2011

Attending:

For the Landlord: s.22 (agent)

For the Tenant: No one

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Codes: MN, SD

Introduction:

This was an application by the tenant for recovery of the security deposit. Only the tenant's agent attended the hearing.

Issues:

Is the tenant entitled to recover of the security deposit?

Background and Evidence:

The tenancy began on July 1, 2008 with rent in the amount of \$ 1,600.00 due in advance on the first day of each month. The tenant paid a security deposit of \$ 1,600.00 on July 1, 2008. The tenancy ended on September 26, 2011. The tenant's agent testified that he tenant provided the landlord with the forwarding address by registered mail on September 23, 2011. I find that the landlord was served with the letter on September 28, 2011 notwithstanding that he refused or neglected to retrieve it. I find that the landlord was served with the application for dispute resolution by registered mail on October 1, 2011 by mailing it on September 26, 2011. The tenant's agent testified that the tenant had not consented to the landlord retaining any of the deposit and the landlord had not returned any portion of the security deposit. The tenant's agent requested double the deposit.

Analysis:

Based on the uncontradicted testimony of the tenant's agent I find that pursuant to section 38 of the Act the tenant is entitled to recover double the security deposit plus interest totaling \$ 3,224.14.

Conclusion:

I find that the tenant has established a claim totalling \$ 3,224.14. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$ 3,274.14. I grant the tenant a monetary Order in that amount. This Order may be enforced in the Small Claims Court should the landlord not comply.

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: December 12, 2011.

---

P.J. Nadler  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 781311**  
**Additional File(s):779197**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)/Respondent(s)

And

s.22

**Tenant(s),**

Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Coquitlam, BC

Date of Hearing: December 13, 2011, by conference call.

Date of Decision: December 13, 2011

Attending:

For the Landlord:

s.22

For the Tenant:

s.22

## DECISION

Dispute Codes      OPR OPB MNSD MNR MNDC MND FF  
                                 MNSD FF

### Preliminary Issues

Upon review of each application for dispute resolution the Landlord advised she wished to withdraw her requests for an Order of Possession and requested an adjournment for her monetary claim. She advised that due to s.22 and unforeseen circumstances s.22 all of her records are locked away in storage and are inaccessible until her possessions are delivered by the moving company. She stated that she had people help her to try and access the boxes with her records however they cannot get the boxes out of storage. She stated that she had sent a fax on Sunday December 11, 2011 to inform the *Residential Tenancy Branch* of this situation and provide some evidence and that she sent the Tenants some evidence via regular mail on December 9, 2011.

The Tenants advised they were not in agreement of this adjournment request and wished to proceed with today's hearing.

After careful consideration of the Landlord's request, I severed the two applications and granted an adjournment pertaining to Landlord's application for a Monetary Order, pursuant to #6.4 of the *Residential Tenancy Branch Rules of Procedure*. This hearing proceeded to hear the merits of the Tenant's application for dispute resolution.

In regards to the adjourned hearing the Landlord was ordered to ensure all of her evidence is received by the *Residential Tenancy Branch* and the Tenants no later than February 10, 2012. The Landlord must serve each party with the same evidence she wishes to rely upon.

The Tenants were ordered to ensure any additional evidence they wished to provide in response to the Landlord's application for dispute resolution is served upon all parties a minimum of five days prior to the hearing, not including the date sent or the date of the hearing.

### Introduction

The Tenants filed seeking a Monetary Order for the return of double their security and pet deposits and to recover the cost of the filing fee from the Landlord.

The parties appeared at the teleconference hearing, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord confirmed receipt of the Tenants' hearing documents and evidence.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, and or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order pursuant to sections 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a tenancy agreement beginning June 1, 2011 and the Tenants were allowed to occupy the rental unit as of approximately May 28, 2011. Rent was payable on the first of each month in the amount of \$1,050.00 and on May 24, 2011 the Tenants paid \$525.00 as the security deposit and \$250.00 as the pet deposit. The tenancy ended as of August 31, 2011 however the Tenants moved their possessions out prior to the end of the month.

The Tenants affirmed they personally served the Landlord with their forwarding address on August 30, 2011 when the female Tenant attended the Landlord's residence and the male Tenant stayed inside the car and took a picture as provided in their evidence. They also provided a picture of the document they served the Landlord listing their forwarding address.

The female Tenant confirmed she attended a move in inspection with the Landlord on May 28, 2011 and argued that the Landlord refused to attend a move out inspection on August 30, 2011 when they were available.

The Landlord affirmed that the Tenants refused to agree to a move out inspection time and that she issued them a final notice to attend. She denies meeting with the female Tenant on August 30, 2011 and claims she was at work then and the Tenant was actually speaking to her nanny. The Landlord stated her nanny is currently out of the

country and cannot provide testimony however she did tell the Landlord that the Tenants did not provide her with a forwarding address or the keys.

The Landlord confirmed she does not possess an order allowing her to keep the security and or pet deposits, she does not have the Tenants' written permission to keep the deposits, and she did not file an application for dispute resolution prior to her application filed on October 11, 2011.

In closing the Tenants stated again that they were at the rental unit August 30, 2011 which is when they requested to do the move out inspection when the Landlord refused, and when the female Tenant handed the Landlord the keys to the rental unit and their forwarding address.

### Analysis

After the close of the hearing a copy of the Landlord's fax was placed on the file. I note that the fax was not sent December 11, 2011 as stated by the Landlord; rather it was faxed December 12, 2011 at 15:31 hrs.

I favor the evidence of the Tenants, who stated they attended the rental unit on August 30, 2011 to deliver their forwarding address, return the keys, and request the move out inspection, as supported by their documentary evidence. I favored this evidence over the evidence of the Landlord who stated she did not meet the female Tenant on August 30, 2011 and that the female Tenant spoke with her nanny that evening. I favored the evidence of the Tenants over the Landlord in part because the Tenants' evidence was forthright and credible.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Landlord's explanation that the female Tenant spoke with her nanny on August 30, 2011 and not the Landlord to be improbable given that the Landlord had provided

late evidence which included a text message she sent to the female Tenant on August 31, 2011 which stated "*When we met last night you were going to call me this morning to confirm our mtg for today at 3*"[sic]. In the presence of this evidence I find the Landlord's explanation that she simply did not meet with the Tenant and did not receive their forwarding address to be improbable. Rather, I find the Tenants' explanation that the Tenants attended the rental unit and took pictures of the female Tenant serving their forwarding address and returning the keys to the Landlord on August 30, 2011, to be plausible given the circumstances presented to me during the hearing and the evidence received from the Landlord after the hearing.

For all the aforementioned reasons, in accordance with section 44 of the Act, I find this tenancy ended August 30, 2011. I further find that the Landlord was personally served the Tenants' forwarding address, in writing, and the keys to the rental unit on August 30, 2011.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than September 14, 2011. The Landlord has not returned the deposits and did not file her application for dispute resolution until October 11, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and pet deposits.

Based on the aforementioned, I find that the Tenants have succeeded in meeting the burden of proof and I award them return of double their pet and security deposits plus interest in the amount of **\$1,550.00** (2 x \$525.00 + 2 x \$250.00 plus interest of \$0.00).

I find that the Tenants have succeeded with their application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,600.00** (\$1,550.00 + 50.00). This Order is legally binding and must be served upon the Landlord.

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: December 13, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 781311**  
**Additional File(s):779197**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)/Respondent(s)

And

s.22

**Tenant(s),**

Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Coquitlam, BC

Date of Hearing: December 13, 2011, by conference call.

Date of Decision: December 13, 2011

Attending:

For the Landlord:

s.22

For the Tenant:

s.22

## **DECISION**

Dispute Codes      OPR OPB MNSD MNR MNDC MND FF  
                             MNSD FF

### Preliminary Issues

Upon review of each application for dispute resolution the Landlord advised she wished to withdraw her requests for an Order of Possession and requested an adjournment for her monetary claim. She advised that due to recent medical issues and unforeseen circumstances in losing her home all of her records are locked away in storage and are inaccessible until her possessions are delivered by the moving company. She stated that she had people help her to try and access the boxes with her records however they cannot get the boxes out of storage. She stated that she had sent a fax on Sunday December 11, 2011 to inform the *Residential Tenancy Branch* of this situation and provide some evidence and that she sent the Tenants some evidence via regular mail on December 9, 2011.

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### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, and or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order pursuant to sections 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a tenancy agreement beginning June 1, 2011 and the Tenants were allowed to occupy the rental unit as of approximately May 28, 2011. Rent was payable on the first of each month in the amount of \$1,050.00 and on May 24, 2011 the Tenants paid \$525.00 as the security deposit and \$250.00 as the pet deposit. The tenancy ended as of August 31, 2011 however the Tenants moved their possessions out prior to the end of the month.

The Tenants affirmed they personally served the Landlord with their forwarding address on August 30, 2011 when the female Tenant attended the Landlord's residence and the male Tenant stayed inside the car and took a picture as provided in their evidence. They also provided a picture of the document they served the Landlord listing their forwarding address.

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Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than September 14, 2011. The Landlord has not returned the deposits and did not file her application for dispute resolution until October 11, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and pet deposits.

Based on the aforementioned, I find that the Tenants have succeeded in meeting the burden of proof and I award them return of double their pet and security deposits plus interest in the amount of **\$1,550.00** (2 x \$525.00 + 2 x \$250.00 plus interest of \$0.00).

I find that the Tenants have succeeded with their application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,600.00** (\$1,550.00 + 50.00). This Order is legally binding and must be served upon the Landlord.

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: December 13, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 781311**  
**Additional File(s):779197**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)/Respondent(s)

And

s.22

**Tenant(s),**

Applicant(s)/Respondent(s)

Regarding a rental unit at:

s.22

Coquitlam, BC

Date of Hearing: December 13, 2011, by conference call.

Date of Decision: December 13, 2011

Attending:

For the Landlord:

s.22

For the Tenant:

s.22

## **DECISION**

Dispute Codes      OPR OPB MNSD MNR MNDC MND FF  
                             MNSD FF

### Preliminary Issues

Upon review of each application for dispute resolution the Landlord advised she wished to withdraw her requests for an Order of Possession and requested an adjournment for her monetary claim. She advised that due to recent medical issues and unforeseen circumstances in losing her home all of her records are locked away in storage and are inaccessible until her possessions are delivered by the moving company. She stated that she had people help her to try and access the boxes with her records however they cannot get the boxes out of storage. She stated that she had sent a fax on Sunday December 11, 2011 to inform the *Residential Tenancy Branch* of this situation and provide some evidence and that she sent the Tenants some evidence via regular mail on December 9, 2011.

The Tenants advised they were not in agreement of this adjournment request and wished to proceed with today's hearing.

After careful consideration of the Landlord's request, I severed the two applications and granted an adjournment pertaining to Landlord's application for a Monetary Order, pursuant to #6.4 of the *Residential Tenancy Branch Rules of Procedure*. This hearing proceeded to hear the merits of the Tenant's application for dispute resolution.

In regards to the adjourned hearing the Landlord was ordered to ensure all of her evidence is received by the *Residential Tenancy Branch* and the Tenants no later than February 10, 2012. The Landlord must serve each party with the same evidence she wishes to rely upon.

The Tenants were ordered to ensure any additional evidence they wished to provide in response to the Landlord's application for dispute resolution is served upon all parties a minimum of five days prior to the hearing, not including the date sent or the date of the hearing.

### Introduction

The Tenants filed seeking a Monetary Order for the return of double their security and pet deposits and to recover the cost of the filing fee from the Landlord.

The parties appeared at the teleconference hearing, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord confirmed receipt of the Tenants' hearing documents and evidence.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, and or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order pursuant to sections 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a tenancy agreement beginning June 1, 2011 and the Tenants were allowed to occupy the rental unit as of approximately May 28, 2011. Rent was payable on the first of each month in the amount of \$1,050.00 and on May 24, 2011 the Tenants paid \$525.00 as the security deposit and \$250.00 as the pet deposit. The tenancy ended as of August 31, 2011 however the Tenants moved their possessions out prior to the end of the month.

The Tenants affirmed they personally served the Landlord with their forwarding address on August 30, 2011 when the female Tenant attended the Landlord's residence and the male Tenant stayed inside the car and took a picture as provided in their evidence. They also provided a picture of the document they served the Landlord listing their forwarding address.

The female Tenant confirmed she attended a move in inspection with the Landlord on May 28, 2011 and argued that the Landlord refused to attend a move out inspection on August 30, 2011 when they were available.

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country and cannot provide testimony however she did tell the Landlord that the Tenants did not provide her with a forwarding address or the keys.

The Landlord confirmed she does not possess an order allowing her to keep the security and or pet deposits, she does not have the Tenants' written permission to keep the deposits, and she did not file an application for dispute resolution prior to her application filed on October 11, 2011.

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After the close of the hearing a copy of the Landlord's fax was placed on the file. I note that the fax was not sent December 11, 2011 as stated by the Landlord; rather it was faxed December 12, 2011 at 15:31 hrs.

I favor the evidence of the Tenants, who stated they attended the rental unit on August 30, 2011 to deliver their forwarding address, return the keys, and request the move out inspection, as supported by their documentary evidence. I favored this evidence over the evidence of the Landlord who stated she did not meet the female Tenant on August 30, 2011 and that the female Tenant spoke with her nanny that evening. I favored the evidence of the Tenants over the Landlord in part because the Tenants' evidence was forthright and credible.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Landlord's explanation that the female Tenant spoke with her nanny on August 30, 2011 and not the Landlord to be improbable given that the Landlord had provided

late evidence which included a text message she sent to the female Tenant on August 31, 2011 which stated "*When we met last night you were going to call me this morning to confirm our mtg for today at 3*"[sic]. In the presence of this evidence I find the Landlord's explanation that she simply did not meet with the Tenant and did not receive their forwarding address to be improbable. Rather, I find the Tenants' explanation that the Tenants attended the rental unit and took pictures of the female Tenant serving their forwarding address and returning the keys to the Landlord on August 30, 2011, to be plausible given the circumstances presented to me during the hearing and the evidence received from the Landlord after the hearing.

For all the aforementioned reasons, in accordance with section 44 of the Act, I find this tenancy ended August 30, 2011. I further find that the Landlord was personally served the Tenants' forwarding address, in writing, and the keys to the rental unit on August 30, 2011.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than September 14, 2011. The Landlord has not returned the deposits and did not file her application for dispute resolution until October 11, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and pet deposits.

Based on the aforementioned, I find that the Tenants have succeeded in meeting the burden of proof and I award them return of double their pet and security deposits plus interest in the amount of **\$1,550.00** (2 x \$525.00 + 2 x \$250.00 plus interest of \$0.00).

I find that the Tenants have succeeded with their application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,600.00** (\$1,550.00 + 50.00). This Order is legally binding and must be served upon the Landlord.

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: December 13, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784028**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

<sup>s.22</sup>  
**Tenant(s),**

Applicant(s)

And

<sup>s.22</sup> **Landlord(s),**

Respondent(s)

Regarding a rental unit at: <sup>s.22</sup> Prince George, BC

Date of Hearing: December 14, 2011, by conference call.

Date of Decision: December 14, 2011

Attending:

For the Landlord: <sup>s.22</sup>

For the Tenant: <sup>s.22</sup>

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued to them for alleged cause and to recover their filing fee.

The tenants and landlord appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, the landlord argued that the tenants did not serve the Notice of Hearing and Application to the landlord to her address for service. However, the tenants served the documents to the address listed on the tenancy agreement for service and I accept that the landlord was properly served under the Residential Tenancy Act (the "Act") and tenancy agreement.

As a second preliminary issue, the landlord stated that she faxed her evidence package to the Residential Tenancy Branch on December 13, 2011; however as of the time of the hearing, the package was not in the file. I note that shortly after the hearing and prior to writing this Decision, the evidence package was delivered to me and I have considered the evidence prior to making this Decision. I further note that the only document delivered by the landlord that the tenants had not previously submitted into evidence was a letter containing the landlord's witnesses' names. The witnesses, however, did not attend the hearing.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Should the landlord be ordered to comply with the Act?

### Background and Evidence

This one year, fixed term tenancy began on September 15, 2011, is set to end on September 14, 2012, monthly rent is \$1,500.00, plus utilities according to the tenants, and the tenants paid a security deposit of \$750.00 on September 14, 2011.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified as to why the tenants had been served a 1 Month Notice to End Tenancy for Cause and to support that Notice.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the female tenant on November 29, 2011, via personal delivery, with a stated effective vacancy date of December 31, 2011. The causes as stated on the Notice alleged that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

The evidence submitted by both parties was a copy of the tenancy agreement, a letter from the landlord, dated on November 29, 2011, the Notice, and an addendum to the tenancy agreement.

The landlord stated that she used an "in-law" suite on the lower level as an office and that there was a common entry used by the rental unit and her office. Despite there being no provision in the written tenancy agreement prepared by the landlord, the landlord stated that she had a verbal contract with the tenants that she would be in the office, Monday to Friday, between 9:00 a.m.-2:00 p.m. The landlord stated that occasionally her brother would come by "her home;" however, the landlord immediately changed her testimony and said "her office," when referring to the "in-law suite." I note that the landlord also stated that she lived in the office, but later disputed she made this statement. I further note that the addendum to the tenancy agreement referred to the suite as an "office."

The tenants stated that the verbal agreement regarding the landlord's use of the office was that the landlord would use the office a couple of days a week, between the hours of 9:00 a.m. -2:00 p.m.

**The landlord's testimony in support of the Notice:**

On two different occasions, the male tenant entered the common entry and questioned or threatened her clients who were visiting her office. The landlord submitted that she was intimidated by the male tenant. I asked the landlord if she called out the police and she responded by saying no, but that she had consulted them.

The landlord's written evidence stated that the incident occurred just after 5:00 p.m.

On another occasion, the landlord stated that the male tenant accosted another visitor at around 7:00 a.m. Upon query, the landlord stated that she did not call out the police after this alleged incident.

**The tenants' testimony in support of cancelling the Notice:**

Upon viewing the property before deciding whether to rent, the landlord informed the tenants that she would use the office a couple of days a week between 9 a.m.- 2p.m. Despite this, the landlord is at the property frequently and at all hours, including late night, early mornings, and on weekends. In addition, the landlord's brother also worked out of the office and was frequently there at all hours.

The tenants were concerned that the office was being used or occupied at all hours, as the office was under the master bedroom and there was no insulation in the house.

The tenants agreed to pay all hydro bills, including for the office, as the landlord assured them she would she would only be using the office a few hours a week. However, despite the landlord's assurance, the office is being used by both the landlord and her brother at all hours, including having clients attend the premises.

As to the incident in question, the tenants have use and possession of the driveway as part of their tenancy agreement and were responsible for maintaining the same. The male tenant had made frequent trips on that day, taking debris and leaves from the premises to the landfill. However on the last trip of the day, the driveway was blocked by someone unknown to the tenants. The male tenant did question her as to who she was and why she was there, but that the visitor seemed unconcerned that she was blocking the tenants' driveway and refused to move.

The tenant denied being aggressive, but they were upset as more and more people were coming by the office, at all hours.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the tenants made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed on the Notice.

In reaching this conclusion I find the landlord provided contradictory and confusing testimony and evidence, which caused me to doubt the credibility of the landlord. For instance the landlord stated that she informed the tenants that she would use the office between the hours 9 a.m.-2 p.m., Monday through Friday; however the landlord's own evidence and testimony shows that the visitors and any incidents occurred well outside those hours. In another instance the landlord stated that she lived in the office, then immediately retracted her statement and denied making it.

I find that rather than the landlord proving the causes listed on the Notice, I find, as I noted in the hearing, that the landlord's evidence and testimony supports that tenants have suffered a loss of their privacy and loss of use of their rental unit. I find that it also appears that the landlord believes that she is still able to use the rental unit and surrounding property in any manner she sees fit by coming and going at any hour and having her brother and clients drop by, despite having rented it to the tenants.

Due to the above, I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

As to the terms of the verbal agreement concerning the amount of time the landlord would spend using the office, in dealing with the agreed upon terms and services in a tenancy agreement, the onus is on the landlord to prove the terms and agreed upon at the commencement of the tenancy. The landlord did not prepare a written tenancy agreement which stated the amount of time she would be using the office in the rental unit for her own purposes. Without that proof and in light of the contradictions in testimony and evidence by the landlord, I accept the testimony of the tenants, who I found to be credible, and find that the landlord and the tenants agreed that the landlord would use the office only 2 days per week, strictly between the hours of 9:00 a.m. until 2:00 p.m. Additionally, this provision did not include having the landlord's brother or clients attend the rental unit.

I accept the testimony of the tenants that the landlord misled them into believing that the office would be used for 2 days a week, between 9 a.m. and 2 p.m. I found the tenants relied on this statement to their detriment, as I find that not only the landlord, but her brother and clients are using the office for countless hours during the week, in violation of their verbal agreement. I also note that the tenants relied upon this statement to induce them into agreeing to pay for the hydro for the entire home, including for the office.

### Conclusion

I find the landlord's 1 Month Notice to End Tenancy for Cause dated November 29, 2011, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

I also grant the tenants' request for recovery of their filing fee, and they are hereby entitled and directed to satisfy their monetary claim of \$50.00 by deducting this amount from the next monthly rent payment. For clarification purposes, the tenants' next monthly rent payment will be \$1,450.00.

As I have accepted the tenants' version of the verbal contract between the parties regarding the use of the office by the landlord, pursuant to section 62 of the Act, I order that the landlord comply with those terms by using the office for no more than two (2) days a week, limited to the hours of between 9:00 a.m. to 2:00 p.m. I also order that the use of the office is limited to the landlord only, and not her brother or clients. In the event that the landlord fails to comply with these terms, the tenants are at liberty to make application for dispute resolution for monetary compensation.

As I have found that the landlord has deprived the tenants of their right to privacy and of the use of their rental unit, including the property and driveway, I also order that the landlord comply with the provisions of section 28 of the Act, concerning the tenants' right to quiet enjoyment.

I further find that the landlord seems unaware of her obligations as a landlord under the Residential Tenancy Act and as a result, I have included a copy of the guidebook to the Act for the landlord to use as a reference in future dealings with the tenants.

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: December 14, 2011.

---

D. Vaughn, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784028**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

<sup>s.22</sup>  
**Tenant(s),**

Applicant(s)

And

<sup>s.22</sup> **Landlord(s),**

Respondent(s)

Regarding a rental unit at:

<sup>s.22</sup>

Prince George, BC

Date of Hearing: December 14, 2011, by conference call.

Date of Decision: December 14, 2011

Attending:

For the Landlord:

<sup>s.22</sup>

For the Tenant:

<sup>s.22</sup>

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued to them for alleged cause and to recover their filing fee.

The tenants and landlord appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, the landlord argued that the tenants did not serve the Notice of Hearing and Application to the landlord to her address for service. However, the tenants served the documents to the address listed on the tenancy agreement for service and I accept that the landlord was properly served under the Residential Tenancy Act (the "Act") and tenancy agreement.

As a second preliminary issue, the landlord stated that she faxed her evidence package to the Residential Tenancy Branch on December 13, 2011; however as of the time of the hearing, the package was not in the file. I note that shortly after the hearing and prior to writing this Decision, the evidence package was delivered to me and I have considered the evidence prior to making this Decision. I further note that the only document delivered by the landlord that the tenants had not previously submitted into evidence was a letter containing the landlord's witnesses' names. The witnesses, however, did not attend the hearing.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Should the landlord be ordered to comply with the Act?

### Background and Evidence

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Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified as to why the tenants had been served a 1 Month Notice to End Tenancy for Cause and to support that Notice.

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The landlord stated that she used an "in-law" suite on the lower level as an office and that there was a common entry used by the rental unit and her office. Despite there being no provision in the written tenancy agreement prepared by the landlord, the landlord stated that she had a verbal contract with the tenants that she would be in the office, Monday to Friday, between 9:00 a.m.-2:00 p.m. The landlord stated that occasionally her brother would come by "her home;" however, the landlord immediately changed her testimony and said "her office," when referring to the "in-law suite." I note that the landlord also stated that she lived in the office, but later disputed she made this statement. I further note that the addendum to the tenancy agreement referred to the suite as an "office."

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**The landlord's testimony in support of the Notice:**

On two different occasions, the male tenant entered the common entry and questioned or threatened her clients who were visiting her office. The landlord submitted that she was intimidated by the male tenant. I asked the landlord if she called out the police and she responded by saying no, but that she had consulted them.

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Upon viewing the property before deciding whether to rent, the landlord informed the tenants that she would use the office a couple of days a week between 9 a.m.- 2p.m. Despite this, the landlord is at the property frequently and at all hours, including late night, early mornings, and on weekends. In addition, the landlord's brother also worked out of the office and was frequently there at all hours.

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The tenants agreed to pay all hydro bills, including for the office, as the landlord assured them she would she would only be using the office a few hours a week. However, despite the landlord's assurance, the office is being used by both the landlord and her brother at all hours, including having clients attend the premises.

As to the incident in question, the tenants have use and possession of the driveway as part of their tenancy agreement and were responsible for maintaining the same. The male tenant had made frequent trips on that day, taking debris and leaves from the premises to the landfill. However on the last trip of the day, the driveway was blocked by someone unknown to the tenants. The male tenant did question her as to who she was and why she was there, but that the visitor seemed unconcerned that she was blocking the tenants' driveway and refused to move.

The tenant denied being aggressive, but they were upset as more and more people were coming by the office, at all hours.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the tenants made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health and safety or lawful right of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed on the Notice.

In reaching this conclusion I find the landlord provided contradictory and confusing testimony and evidence, which caused me to doubt the credibility of the landlord. For instance the landlord stated that she informed the tenants that she would use the office between the hours 9 a.m.-2 p.m., Monday through Friday; however the landlord's own evidence and testimony shows that the visitors and any incidents occurred well outside those hours. In another instance the landlord stated that she lived in the office, then immediately retracted her statement and denied making it.

I find that rather than the landlord proving the causes listed on the Notice, I find, as I noted in the hearing, that the landlord's evidence and testimony supports that tenants have suffered a loss of their privacy and loss of use of their rental unit. I find that it also appears that the landlord believes that she is still able to use the rental unit and surrounding property in any manner she sees fit by coming and going at any hour and having her brother and clients drop by, despite having rented it to the tenants.

Due to the above, I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

As to the terms of the verbal agreement concerning the amount of time the landlord would spend using the office, in dealing with the agreed upon terms and services in a tenancy agreement, the onus is on the landlord to prove the terms and agreed upon at the commencement of the tenancy. The landlord did not prepare a written tenancy agreement which stated the amount of time she would be using the office in the rental unit for her own purposes. Without that proof and in light of the contradictions in testimony and evidence by the landlord, I accept the testimony of the tenants, who I found to be credible, and find that the landlord and the tenants agreed that the landlord would use the office only 2 days per week, strictly between the hours of 9:00 a.m. until 2:00 p.m. Additionally, this provision did not include having the landlord's brother or clients attend the rental unit.

I accept the testimony of the tenants that the landlord misled them into believing that the office would be used for 2 days a week, between 9 a.m. and 2 p.m. I found the tenants relied on this statement to their detriment, as I find that not only the landlord, but her brother and clients are using the office for countless hours during the week, in violation of their verbal agreement. I also note that the tenants relied upon this statement to induce them into agreeing to pay for the hydro for the entire home, including for the office.

### Conclusion

I find the landlord's 1 Month Notice to End Tenancy for Cause dated November 29, 2011, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

I also grant the tenants' request for recovery of their filing fee, and they are hereby entitled and directed to satisfy their monetary claim of \$50.00 by deducting this amount from the next monthly rent payment. For clarification purposes, the tenants' next monthly rent payment will be \$1,450.00.

As I have accepted the tenants' version of the verbal contract between the parties regarding the use of the office by the landlord, pursuant to section 62 of the Act, I order that the landlord comply with those terms by using the office for no more than two (2) days a week, limited to the hours of between 9:00 a.m. to 2:00 p.m. I also order that the use of the office is limited to the landlord only, and not her brother or clients. In the event that the landlord fails to comply with these terms, the tenants are at liberty to make application for dispute resolution for monetary compensation.

As I have found that the landlord has deprived the tenants of their right to privacy and of the use of their rental unit, including the property and driveway, I also order that the landlord comply with the provisions of section 28 of the Act, concerning the tenants' right to quiet enjoyment.

I further find that the landlord seems unaware of her obligations as a landlord under the Residential Tenancy Act and as a result, I have included a copy of the guidebook to the Act for the landlord to use as a reference in future dealings with the tenants.

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: December 14, 2011.

---

D. Vaughn, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784781**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Nanaimo, BC

Date of Hearing: February 14, 2012, by conference call.

Date of Decision: February 14, 2012

Attending:

For the Landlord: No Appearance

For the Tenant:

s.22

## **DECISION**

Dispute Codes: MNSD

### Introduction

A hearing was conducted by conference call in the presence of the tenant applicants and in the absence of the landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on December 5, 2011. It is deemed received 5 days later. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence:

The tenancy began September 1, 2006. The rent was \$1750 per month payable on first day of each month. The tenant(s) paid a security deposit of \$875 at the start of the tenancy.

The tenancy ended on July 31, 2011. The tenant(s) provided the landlord with his/her their forwarding address in writing on July 31, 2011.

The landlord filed an Application for Dispute Resolution seeking to keep the security deposit. The tenant also filed a claim. On October 20, 2011 the landlord's claim was dismissed without leave to re-apply as the landlord failed to attend the hearing. The tenants were not able to prove service and their application was dismissed with leave to re-apply.

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

The tenants paid a security deposit of \$875 on September 1, 2006. The interest on the security deposit totals \$27.98. I determined the tenancy ended on July 31, 2011. I further determined the tenants provided the landlord with their forwarding address in writing on July 31, 2011. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. The landlord's monetary claim has been dismissed without leave to re-apply. The landlord failed to return the security deposit. As a result I determined the tenants have established a claim against the landlord for double the security deposit in the sum of \$1750 ( $\$875 \times 2 = \$1750$ ). The tenants are also entitled to the interest in the sum of \$27.98 but not the doubling of the interest.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$1777.98 plus the sum of \$50 in respect of the filing fee for a total of \$1827.98. I dismissed the claim for the cost of registered mail service as the only authority a dispute resolution officer has dealing with costs is the cost of the filing fee.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: February 14, 2012.

---

R.A. Morrison  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784781**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Nanaimo, BC

Date of Hearing: February 14, 2012, by conference call.

Date of Decision: February 14, 2012

Attending:

For the Landlord: No Appearance

For the Tenant:

s.22

## **DECISION**

Dispute Codes: MNSD

### Introduction

A hearing was conducted by conference call in the presence of the tenant applicants and in the absence of the landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on December 5, 2011. It is deemed received 5 days later. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence:

The tenancy began September 1, 2006. The rent was \$1750 per month payable on first day of each month. The tenant(s) paid a security deposit of \$875 at the start of the tenancy.

The tenancy ended on July 31, 2011. The tenant(s) provided the landlord with his/her their forwarding address in writing on July 31, 2011.

The landlord filed an Application for Dispute Resolution seeking to keep the security deposit. The tenant also filed a claim. On October 20, 2011 the landlord's claim was dismissed without leave to re-apply as the landlord failed to attend the hearing. The tenants were not able to prove service and their application was dismissed with leave to re-apply.

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

The tenants paid a security deposit of \$875 on September 1, 2006. The interest on the security deposit totals \$27.98. I determined the tenancy ended on July 31, 2011. I further determined the tenants provided the landlord with their forwarding address in writing on July 31, 2011. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. The landlord's monetary claim has been dismissed without leave to re-apply. The landlord failed to return the security deposit. As a result I determined the tenants have established a claim against the landlord for double the security deposit in the sum of \$1750 ( $\$875 \times 2 = \$1750$ ). The tenants are also entitled to the interest in the sum of \$27.98 but not the doubling of the interest.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$1777.98 plus the sum of \$50 in respect of the filing fee for a total of \$1827.98. I dismissed the claim for the cost of registered mail service as the only authority a dispute resolution officer has dealing with costs is the cost of the filing fee.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: February 14, 2012.

---

R.A. Morrison  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 781311**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Coquitlam, BC

Date of Hearing: February 24, 2012, by conference call.

Date of Decision: February 24, 2012

Attending:

For the Landlord: No One

For the Tenant:

s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNR MNDC MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The applicant Landlord did not appear at the teleconference hearing, however the respondent Tenants did appear.

### Issue(s) to be Decided

1. Has the Landlord met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

No one was in attendance for the applicant Landlord however the Tenant and her legal counsel appeared at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

There was no additional evidence or testimony provided in support of the Landlord's claim as no one attended on behalf of the Landlord.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time. Based on the aforementioned I find that the Landlord has failed to present the merits of their application and the application is dismissed.

### Conclusion

I HEREBY DISMISS the Landlord's application.

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: February 24, 2012.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Coquitlam, BC

Date of Hearing: February 24, 2012, by conference call.

Date of Decision: February 24, 2012

Attending:

For the Landlord: No One

For the Tenant:

s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNR MNDC MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The applicant Landlord did not appear at the teleconference hearing, however the respondent Tenants did appear.

### Issue(s) to be Decided

1. Has the Landlord met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

No one was in attendance for the applicant Landlord however the Tenant and her legal counsel appeared at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

There was no additional evidence or testimony provided in support of the Landlord's claim as no one attended on behalf of the Landlord.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time. Based on the aforementioned I find that the Landlord has failed to present the merits of their application and the application is dismissed.

### Conclusion

I HEREBY DISMISS the Landlord's application.

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: February 24, 2012.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 781311**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Coquitlam, BC

Date of Hearing: February 24, 2012, by conference call.

Date of Decision: February 24, 2012

Attending:

For the Landlord: No One

For the Tenant:

s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNR MNDC MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The applicant Landlord did not appear at the teleconference hearing, however the respondent Tenants did appear.

### Issue(s) to be Decided

1. Has the Landlord met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

No one was in attendance for the applicant Landlord however the Tenant and her legal counsel appeared at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

There was no additional evidence or testimony provided in support of the Landlord's claim as no one attended on behalf of the Landlord.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time. Based on the aforementioned I find that the Landlord has failed to present the merits of their application and the application is dismissed.

### Conclusion

I HEREBY DISMISS the Landlord's application.

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: February 24, 2012.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784781**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Nanaimo, BC

Date of Hearing: March 20, 2012, by conference call.

Date of Decision: April 02, 2012

Attending:

For the Landlord:

s.22

For the Tenant:

s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; FF; O

### **Introduction**

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

This matter was heard on February 14, 2012, and a Decision rendered the same day. The Tenants were provided with a Monetary Order in the amount of \$1,827.98 representing double the amount of the security deposit plus interest and recovery of the Tenants' application fee.

The Landlord filed an Application for Review of the above Order and on February 29, 2012, on the grounds that she had new and relevant evidence and that the Dispute Resolution Officer's Decision was obtained by fraud. The Reviewing Officer found that there was no new and relevant evidence provided by the Landlord, but that the Tenants omitted information during the Hearing which may have resulted in a different outcome. The Tenant's application was granted and orders were made that a new Hearing be scheduled; that the Landlord serve the Tenants with a copy of the Review Consideration Decision and Notice of Hearing within 3 days of receipt of the Decision; and that the Decision and Order of February 14, 2012 be suspended pending outcome of the new Hearing.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she did not serve the Tenants with the Notice of Hearing. She stated that she thought that the Residential Tenancy Branch would provide the Tenants with a copy of the Review Consideration Decision and the Notice of Hearing. I reminded the Landlord that the Review Consideration was very clear that the Landlord must serve the Tenant.

The Tenant testified that he found out about the Hearing when he called the branch to make enquiries on the file. The Tenant stated that he wanted to go ahead with the Hearing today because the Landlord had alleged fraud in her Application for Review and he wanted to clear his name.

Although the Tenants were not duly served, the Hearing proceeded at the request of the Tenant.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?

### **Background and Evidence**

This tenancy began on September 1, 2006 and ended on July 31, 2011. Monthly rent was \$1,750.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$875.00 on September 1, 2006. The Tenants provided their forwarding address in writing on July 31, 2011.

The Landlord and the Tenants both filed previous Applications for Dispute Resolution against the security deposit and those Hearings were scheduled to be heard together on October 20, 2011. The Tenants attended the hearing on October 20, 2011, but the Landlord did not. The Landlord's Application was dismissed without leave to reapply. The Tenants did not provide sufficient evidence that the Landlord was served with their Application and therefore their Application was dismissed with leave to reapply. The Hearing on February 14, 2012, was the Tenant's reapplication.

The Landlord testified that the parties had an agreement that she would keep the security deposit and therefore she did not attend the hearing on October 20, 2011.

The Tenant testified that the Tenants and the Landlord were attempting to negotiate an agreement with respect to the disposition of the security deposit, but no such agreement was finalized. He stated that the Tenants offered to settle the matter if the Landlord canceled her claim for nearly \$5,000.00. He stated that the Landlord's claim was for maintenance work that was the Landlord's responsibility, but that the Tenants tried to settle the matter to avoid further stress. He stated that the Tenants received no confirmation that the Landlord's application had been canceled, so he phoned the Residential Tenancy Branch on September 2, 2011, and was advised that the Landlord had not canceled the Hearing and was still sending in documentary evidence. The Tenant testified that he was advised to call in on October 20, or a Decision could be made in the Tenants' absence. He stated that he was advised that he could reapply, which he did on December 2, 2011.

The Tenant testified that he mailed the documentary evidence in support of his December 2 application to the Landlord, by registered mail, and that the Landlord

signed for the documents on December 5, 2011. The Tenant provided a copy of the Canada Post tracking system printout in evidence.

Copies of the e-mails between the parties and from the Residential Tenancy Branch were also provided in evidence.

### **Analysis**

The Landlord testified that the parties had an agreement that she would keep the security deposit and therefore she did not attend the hearing on October 20, 2011. Based on the documents provided in evidence, I am satisfied that the Landlord was duly served with notice of the February 14, 2012, Hearing. She did not provide a satisfactory explanation with respect to why she did not attend that Hearing. In any event, she was successful in her Application for a Review Consideration and the matter was ordered to be set down for a new Hearing.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Based on the testimony and documentary evidence before me, I find that there was no agreement to settle this matter before the October 20<sup>th</sup> Hearing date, because the Landlord failed to cancel the Hearing date upon which the Tenants' offer was contingent.

The Landlord's application against the security deposit was dismissed without leave to reapply on October 20, 2011. Therefore, I order the Landlord to return the security deposit, together with accrued interest in the amount of \$27.98, to the Tenants forthwith.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, the Landlord received the Tenants' forwarding address in writing on July 31, 2011, and the Landlord filed her application against the security deposit on the 15<sup>th</sup>

day. Therefore, I find that the Tenants are not entitled to the doubling provision provided by Section 38(6) of the Act.

The Tenants have been partially successful in their application and I find that they are entitled to recover the cost of filing their February 14<sup>th</sup> application against the Landlord.

The Decision and Monetary Order of February 14, 2012, are hereby set aside. I hereby provide the Tenants with a Monetary Order in the amount of **\$952.98** (\$857.00 security deposit + \$27.98 interest + \$50.00 filing fee).

### **Conclusion**

I hereby set aside the Decision and Monetary Order dated February 14, 2012.

I hereby grant the Tenants a Monetary Order in the amount of **\$952.98** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 02, 2012.

---

A. Holmes  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784781**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Nanaimo, BC

Date of Hearing: March 20, 2012, by conference call.

Date of Decision: April 02, 2012

Attending:

For the Landlord:

s.22

For the Tenant:

s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; FF; O

### **Introduction**

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

This matter was heard on February 14, 2012, and a Decision rendered the same day. The Tenants were provided with a Monetary Order in the amount of \$1,827.98 representing double the amount of the security deposit plus interest and recovery of the Tenants' application fee.

The Landlord filed an Application for Review of the above Order and on February 29, 2012, on the grounds that she had new and relevant evidence and that the Dispute Resolution Officer's Decision was obtained by fraud. The Reviewing Officer found that there was no new and relevant evidence provided by the Landlord, but that the Tenants omitted information during the Hearing which may have resulted in a different outcome. The Tenant's application was granted and orders were made that a new Hearing be scheduled; that the Landlord serve the Tenants with a copy of the Review Consideration Decision and Notice of Hearing within 3 days of receipt of the Decision; and that the Decision and Order of February 14, 2012 be suspended pending outcome of the new Hearing.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she did not serve the Tenants with the Notice of Hearing. She stated that she thought that the Residential Tenancy Branch would provide the Tenants with a copy of the Review Consideration Decision and the Notice of Hearing. I reminded the Landlord that the Review Consideration was very clear that the Landlord must serve the Tenant.

The Tenant testified that he found out about the Hearing when he called the branch to make enquiries on the file. The Tenant stated that he wanted to go ahead with the Hearing today because the Landlord had alleged fraud in her Application for Review and he wanted to clear his name.

Although the Tenants were not duly served, the Hearing proceeded at the request of the Tenant.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?

### **Background and Evidence**

This tenancy began on September 1, 2006 and ended on July 31, 2011. Monthly rent was \$1,750.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$875.00 on September 1, 2006. The Tenants provided their forwarding address in writing on July 31, 2011.

The Landlord and the Tenants both filed previous Applications for Dispute Resolution against the security deposit and those Hearings were scheduled to be heard together on October 20, 2011. The Tenants attended the hearing on October 20, 2011, but the Landlord did not. The Landlord's Application was dismissed without leave to reapply. The Tenants did not provide sufficient evidence that the Landlord was served with their Application and therefore their Application was dismissed with leave to reapply. The Hearing on February 14, 2012, was the Tenant's reapplication.

The Landlord testified that the parties had an agreement that she would keep the security deposit and therefore she did not attend the hearing on October 20, 2011.

The Tenant testified that the Tenants and the Landlord were attempting to negotiate an agreement with respect to the disposition of the security deposit, but no such agreement was finalized. He stated that the Tenants offered to settle the matter if the Landlord canceled her claim for nearly \$5,000.00. He stated that the Landlord's claim was for maintenance work that was the Landlord's responsibility, but that the Tenants tried to settle the matter to avoid further stress. He stated that the Tenants received no confirmation that the Landlord's application had been canceled, so he phoned the Residential Tenancy Branch on September 2, 2011, and was advised that the Landlord had not canceled the Hearing and was still sending in documentary evidence. The Tenant testified that he was advised to call in on October 20, or a Decision could be made in the Tenants' absence. He stated that he was advised that he could reapply, which he did on December 2, 2011.

The Tenant testified that he mailed the documentary evidence in support of his December 2 application to the Landlord, by registered mail, and that the Landlord

signed for the documents on December 5, 2011. The Tenant provided a copy of the Canada Post tracking system printout in evidence.

Copies of the e-mails between the parties and from the Residential Tenancy Branch were also provided in evidence.

### **Analysis**

The Landlord testified that the parties had an agreement that she would keep the security deposit and therefore she did not attend the hearing on October 20, 2011. Based on the documents provided in evidence, I am satisfied that the Landlord was duly served with notice of the February 14, 2012, Hearing. She did not provide a satisfactory explanation with respect to why she did not attend that Hearing. In any event, she was successful in her Application for a Review Consideration and the matter was ordered to be set down for a new Hearing.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Based on the testimony and documentary evidence before me, I find that there was no agreement to settle this matter before the October 20<sup>th</sup> Hearing date, because the Landlord failed to cancel the Hearing date upon which the Tenants' offer was contingent.

The Landlord's application against the security deposit was dismissed without leave to reapply on October 20, 2011. Therefore, I order the Landlord to return the security deposit, together with accrued interest in the amount of \$27.98, to the Tenants forthwith.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, the Landlord received the Tenants' forwarding address in writing on July 31, 2011, and the Landlord filed her application against the security deposit on the 15<sup>th</sup>

day. Therefore, I find that the Tenants are not entitled to the doubling provision provided by Section 38(6) of the Act.

The Tenants have been partially successful in their application and I find that they are entitled to recover the cost of filing their February 14<sup>th</sup> application against the Landlord.

The Decision and Monetary Order of February 14, 2012, are hereby set aside. I hereby provide the Tenants with a Monetary Order in the amount of **\$952.98** (\$857.00 security deposit + \$27.98 interest + \$50.00 filing fee).

### **Conclusion**

I hereby set aside the Decision and Monetary Order dated February 14, 2012.

I hereby grant the Tenants a Monetary Order in the amount of **\$952.98** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 02, 2012.

---

A. Holmes  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 791100**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Burnaby, BC

Date of Hearing: June 11, 2012, by conference call.

Date of Decision: June 11, 2012

Attending:

For the Landlord: No One

For the Tenant: No One



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      O F F

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a finding or ruling whether the Tenant had previously paid a security deposit and to recover the cost of the filing fee for this application.

No one appeared at the teleconference hearing on behalf of the Landlord or Tenant.

### Issue(s) to be Decided

1. Has the Landlord presented the merits of his application?

### Background and Evidence

There was no additional evidence or testimony provided as there was no one in attendance at the scheduled hearing.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Landlord and respondent Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on

behalf of the applicant Landlord or respondent Tenant called into the hearing during this time. Based on the aforementioned the Landlord has not presented the merits of their application and the application is hereby dismissed with leave to reapply.

Conclusion

**I HEREBY DISMISS** the Landlord's application with leave to reapply.

This dismissal does not extend any applicable time limits set out under the Act.

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: June 11, 2012.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 793508**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**PRINCE CHARLES APARTMENTS, Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Regarding a rental until at:

s.22

New Westminster, BC

Date of Hearing: July 10, 2012, by conference call.

Date of Decision: July 10, 2012

Attending:

For the Landlord: s.22 Landlord

For the Tenant: No One



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession pursuant to a mutual agreement to end tenancy and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in two different manners. They were initially sent via registered mail on June 16, 2012. Mail receipt numbers were provided in the Landlord's evidence. The Landlord advised that the registered mail package was returned to him unclaimed. The second service was done in person, from the Landlord to the Tenant on June 16, 2012.

Based on the aforementioned I find the Tenant was sufficiently served notice of this proceeding and I proceeded in his absence.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord submitted copies of the following documents into evidence: Canada post receipts; the mutual agreement to end tenancy signed by both parties on June 11, 2012; a letter from the Landlord's agent confirming the signing of the mutual agreement to end the tenancy; and the tenancy agreement.

The Landlord advised that shortly after the Tenant occupied the rental unit on May 1, 2012 they started getting complaints from other tenants. After receiving numerous e-mails and letters of complaints the Landlord and his Agent negotiated a mutual agreement to end this tenancy with the Tenant effective July 31, 2012.

Since signing the mutual agreement the Tenant has made contradictory statements to the Landlord's Agent indicating that he may not vacate the rental unit in accordance with

the mutual agreement. As a result the Landlord thought it best that he seek an order of possession to ensure he regains possession of the unit.

### Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their documentary evidence.

Upon review of the Mutual Agreement to End Tenancy I accept that on June 11, 2012 the Tenant and the Landlord signed the mutual agreement to end the tenancy effective July 31, 2012 at 1:00 p.m.

Section 55(2)(d) stipulates that a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy is ended.

*Residential Tenancy Policy Guideline # 11* provides that an agreement or notice to end tenancy cannot be unilaterally withdrawn which means once the parties mutually agree to end the tenancy in writing, the only way to continue the tenancy is if both parties mutually agree to reinstate the tenancy.

In this case the Tenant has informed the Landlord he will not be vacating the unit however the Landlord has not agreed to re-instate this tenancy.

Based on the foregoing I hereby approve the Landlord's request for an Order of Possession and recovery of the **\$50.00** filing fee.

### Conclusion

The Landlord has been awarded an Order of Possession effective **July 31, 2012, at 1:00 p.m.** This Order is legally binding and must be served upon the Tenant.

The Landlord may withhold the one time award of **\$50.00** from the security deposit currently held in trust, as full recovery of the filing fee.

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 10, 2012.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 802203**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

**ROYAL LEPAGE**

s.22

**Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Terrace, BC

Date of Hearing: January 22, 2013, by conference call.

Date of Decision: January 22, 2013

Attending:

For the Landlord:

s.22

For the Tenant:

s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to dispute an additional rent increase.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the rent increase be cancelled or upheld?

### Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: their written statement; e-mails and letters written between the parties; hydro invoices; photos which were faxed; a notice of rent increase dated August 22, 2012; and a Dispute Resolution Decision issued March 5, 2012.

The parties confirmed the tenancy began in March 2005 and that the Tenants' rent was increased from \$600.00 to \$624.00 effective December 1, 2011. The Tenants paid \$300.00 as the security deposit at the onset of the tenancy.

The Tenants confirmed that they were not disputing the rent increase which became effective December 1, 2011 however they are disputing the increase that is to become effective February 1, 2013 raising their rent from \$624.00 to \$649.00.

The Landlord advised that the notice of rent increase was issued in the approved form and was served to the Tenants in November 2012 for an increase effective February 1, 2013. She acknowledged that she used the 2012 allowable increase amount of 4.3 % in her calculation and rounded the amount down to \$649.00.

### Analysis

The *Residential Tenancy Act* and *Regulation* stipulate the amount for an annual rent increase. The annual rent increase cannot exceed the allowable percentage for the year in which the increase is scheduled to take effect.

In this case the notice of annual rent increase was served in November 2012, therefore the increase could not take effect until March 1, 2013, three full months after it was served. Furthermore the increase was issued for an amount of 4.01% raising the rent from \$624.00 to \$649.00 effective February 1, 2013. The posted allowable rent increase for 2013 is only **3.8%**.

Based on the foregoing, I find the notice of rent increase that is scheduled to take effect February 1, 2013, does not meet the legislated requirements, and it is hereby cancelled.

### Conclusion

I HEREBY UPHOLD the Tenants' application. The Notice of Rent Increase scheduled to take effective February 1, 2013 to raise the rent to \$649.00 is HEREBY CANCELLED and is of no force or effect.

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 22, 2013

  
\_\_\_\_\_  
L. Bell, Arbitrator  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 247991**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

**RANDALL NORTH REAL ESTATE, Landlord(s),**

Respondent(s)

Regarding a rental unit at:

s.22

Victoria, BC

Date of Hearing: January 23, 2013, by conference call.

Date of Decision: January 23, 2013

Attending:

For the Landlord: Ryan Hockley, Property Manager

For the Tenant: s.22



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI OLC O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute a rent increase, to obtain an Order to have the Landlord comply with the Act, regulation, or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Tenant be awarded compensation for payment of an invalid rent increase?
2. Should the Landlord be ordered to comply with the Act, regulation, or tenancy agreement?

### Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: their written statement; photos of the rental building; their December 31, 2012 letter to the Landlord ending their tenancy effective January 31, 2013; Canada Post receipts; and two notices of rent increase.

The parties confirmed they entered into a fixed term tenancy that began on February 1, 2011 which switched to a month to month tenancy after January 31, 2012. Rent was initially payable in the amount of \$800.00 on the first of each month and was raised to

\$810.00 effective February 1, 2012. On January 26, 2011 the Tenant paid \$400.00 as the security deposit. The Tenant has provided 30 days written notice to end his tenancy effective January 31, 2013, and will be vacating the property by that date.

The Tenant stated that he was disputing the 2012 rent increase and wanted to be reimbursed the \$120.00 (12 x \$10.00) he paid because he believes the notice of rent increase was invalid. He advised that he was unhappy because he found out that other tenants in the building were paying less rent than him so he brought his notices of rent increases into the *Residential Tenancy Branch* where he was told the notices were not valid because they were not signed. He argued that because they were not signed they were illegal and the Landlord obtained the additional rent by fraud.

The Tenant confirmed he received the first notice of rent increase near the end of October 2011 when it was placed through his mail slot on his door. He said he started paying the increased amount as required by the notice because he trusted his landlord.

The Landlord confirmed the notice was served to the Tenant on approximately October 20, 2011. He acknowledged that the notice was not signed but that did not make it invalid. He argued that he was of the opinion that they were still valid notices and noted that the Tenant acknowledged receipt of the notice and that he must have accepted the notice because he paid the increased amount up until he made this application.

I asked the Tenant which section of the Act was being breached to which he was not able to respond. He stated that it was a notice and therefore in order to be legal it must be signed. He requested that I provide him with the section of the Act that would determine that. He confirmed that his request to have the Landlord comply with the Act, regulation, or tenancy agreement pertained to the notices of rent increase he had received.

### Analysis

I have carefully considered the aforementioned and documentary evidence and on a balance of probabilities I find as follows:

Section 42 of the Act and Part 4 section 22 of the Regulation speak to the requirements of a notice of annual rent increase. I have copied these sections of legislation to the end of this decision.

In this case the evidence supports the Landlord complied with section 42 of the Act by issuing a notice of rent increase in the approved form which: provided 3 months notice

and listed: the Landlord and Tenant's name; that is was their first rent increase; the current rent, the increase amount which was within the legislated amount, and the new rent; the date the new rent was payable; and listed the Landlord's business name in the last name block as instructed on the form.

The legislation does not stipulate that a notice of rent increase must be signed by the Landlord or that the signature be dated. Therefore, I find there to be insufficient evidence to prove the Landlord breached the Act or that the Tenant paid an invalid rent increase. Accordingly, I dismiss the Tenant's claim, in its entirety.

The Tenant has not been successful with their application; therefore, I find he must bear the burden of the cost to file his claim.

### Conclusion

I HEREBY DISMISS the Tenant's claim.

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 23, 2013

  
\_\_\_\_\_  
L. Bell, Arbitrator  
Residential Tenancy Branch

### Timing and notice of rent increases

- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

## Part 4 — Rent Increases

### Annual rent increase

- 22** (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.
- (2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

- (3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]



# Residential Tenancy Branch

RTB-136

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# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 770356**  
**Additional File(s):763987**

**Date: July 08, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**, Tenant(s),**  
Applicant(s)/Respondent(s)

Re: Applications pursuant to sections 67 72 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Bowen Island, BC

## **ORDER**

**I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*, s.22

s.22

to pay to

s.22

s.22 the sum of **\$6,254.74.**

Dated: July 08, 2011

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 770356**  
**Additional File(s):763987**

**Date: July 08, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**, Tenant(s),**  
Applicant(s)/Respondent(s)

Re: Applications pursuant to sections 67 72 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Bowen Island, BC

## **ORDER**

**I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*, s.22

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to pay to

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s.22 the sum of **\$6,254.74.**

Dated: July 08, 2011

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 770356**  
**Additional File(s):763987**

**Date: July 08, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22

**, Tenant(s),**  
Applicant(s)/Respondent(s)

Re: Applications pursuant to sections 67 72 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Bowen Island, BC

## ORDER

**I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*, s.22

s.22

to pay to

s.22

s.22 the sum of **\$6,254.74.**

Dated: July 08, 2011

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 770814**

**Date: May 24, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

**EASYRENT REAL ESTATE SERVICES LTD, Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 67 72 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Vancouver, BC

## **ORDER**

**I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*, the Respondent, **EASYRENT REAL ESTATE SERVICES LTD**, to pay to the Applicant,  
s.22 the sum of **\$1,433.11**.

Dated: May 24, 2011

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 770814**

**Date: May 24, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

**EASYRENT REAL ESTATE SERVICES LTD, Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 67 72 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Vancouver, BC

## **ORDER**

**I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*, the Respondent, **EASYRENT REAL ESTATE SERVICES LTD**, to pay to the Applicant,

s.22

the sum of **\$1,433.11**.

Dated: May 24, 2011

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 245046**  
**Additional File(s):245014**

**Date: May 31, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**DEVON PROPERTIES LTD, Landlord(s),**  
Applicant(s)/Respondent(s)

And

**Tenant(s),**  
Applicant(s)/Respondent(s)

Re: Applications pursuant to sections 70 62 72 of the *Residential Tenancy Act*  
regarding a rental unit at:

**Victoria, BC**

## ORDER

**I HEREBY ORDER**, pursuant to section 67 of the *Residential Tenancy Act*,  
to pay to the Applicant, **DEVON PROPERTIES LTD**, the sum of **\$50.00**.

Dated: May 31, 2011

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 780873**

**Date: December 12, 2011**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Re: An application pursuant to section 67,38 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Richmond, BC

## **ORDER**

I DO HEREBY ORDER that the respondent pay to the applicant the sum of \$ 3,274.14 in satisfaction of this matter.

And it is further Ordered that the above sum be paid FORTHWITH.

This Order may be filed with the Provincial Court of British Columbia for enforcement.

Dated: December 12, 2011

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P.J. Nadler  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 784781**  
**Date: February 14, 2012**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Re: An application pursuant to section 67 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Nanaimo, BC

## **ORDER**

I ORDER that the respondent(s) pay to the applicant(s) the following amounts in satisfaction of this matter:

|                              |    |              |
|------------------------------|----|--------------|
| In respect of this claim:    | \$ | 1777.98      |
| In respect of the filing fee |    | <u>50.00</u> |
| TOTAL                        | \$ | 1827.98      |

And it is further Ordered that the above sum be paid FORTHWITH.

This Order may be filed with the Provincial Court of British Columbia for enforcement.

Dated: February 14, 2012

---

R.A. Morrison  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 784781**  
**Date: February 14, 2012**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Re: An application pursuant to section 67 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Nanaimo, BC

## **ORDER**

I ORDER that the respondent(s) pay to the applicant(s) the following amounts in satisfaction of this matter:

|                              |    |              |
|------------------------------|----|--------------|
| In respect of this claim:    | \$ | 1777.98      |
| In respect of the filing fee |    | <u>50.00</u> |
| TOTAL                        | \$ | 1827.98      |

And it is further Ordered that the above sum be paid FORTHWITH.

This Order may be filed with the Provincial Court of British Columbia for enforcement.

Dated: February 14, 2012

---

R.A. Morrison  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784781**

**DATE: April 2, 2012**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 38 and 72(1) of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Nanaimo, BC

## **ORDER**

I Order that the Landlord,  
s.22 the sum of **\$952.98**.

s.22

pay to the Tenants,

s.22

Dated: April 2, 2012

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A. Holmes  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 784781**

**DATE: April 2, 2012**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

s.22

**Tenant(s),**

Applicant(s)

And

s.22

**Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 38 and 72(1) of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Nanaimo, BC

## **ORDER**

I Order that the Landlord

s.22

pay to the Tenants,

s.22

s.22 the sum of **\$952.98**.

Dated: April 2, 2012

---

A. Holmes  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No. 793508**

**Date: July 10, 2012**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**PRINCE CHARLES APARTMENTS, Landlord(s),**

Applicant(s)

And

s.22

**Tenant(s),**

Respondent(s)

Re: An application pursuant to section 55 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

New Westminster, BC

## **ORDER**

**I AUTHORIZE AND COMMAND YOU,** s.22 and any guest or other person occupying the above noted rental unit, to deliver full and peaceable vacant possession and occupation of the rental unit to **PRINCE CHARLES APARTMENTS or their Agent** not later than **July 31, 2012, at 1:00 p.m.** after service of this Order upon you.

Dated: July 10, 2012

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On June 06, 2011, the Residential Tenancy Branch received an Application for Review from s.22 Landlord.

Subject:

File Number: 771817,  
Decision dated: June 28, 2011  
Rental Unit: s.22  
Nanaimo, BC

Other Party:

s.22

Tenants

### Introduction

On May 26, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order to allow an additional rent increase above the legislated annual increase amount. The tenant did not attend the hearing. The Dispute Resolution Officer dismissed the landlord's application without leave to reapply. The landlord has applied for a review of this decision.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The applicant relies on section 79(2)(b) of the *Residential Tenancy Act* (the "Act") which provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

## **Issues**

Does the applicant have relevant evidence that is new and was not available at the time of the hearing?

## **Facts and Analysis**

Residential Tenancy Policy Guideline #24 provides as follows:

*“New” evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained, such as photographs that could have been taken or affidavits that could have been sworn before the hearing took place.*

In order to successfully argue that a review hearing should be granted on the grounds of new and relevant evidence, the applicants must prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing.

In the application, the applicant must list each piece of new and relevant evidence and must explain its relevance, must explain why it was unavailable at the time of the hearing and must state in what way the decision of the dispute resolution officer may have differed if the evidence was available and introduced at the time of the hearing.

In his application for review, the landlord states:

*“The arbitrator’s decision is based on misinformation and furthermore this information was not provided by the landlord during the conference call. The arbitrator’s interpretation of matters regarding the expenses involved in maintaining the residence in a satisfactory condition is also faulty. The arbitrator is biased towards the tenant and unreasonable in implying or informing the landlord that certain measures should have been taken as standard maintenances of the property.”*

The landlord has not attached any documents to his application on the grounds of new evidence.

Upon review of the application, I find that the landlord has not submitted any new evidence. The Dispute Resolution Officer considered all the evidence before her, in the making of her decision and made her decision based on the fact that she found that the circumstances of repair did not meet the burden of proof for an additional rent increase.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

The landlord has failed to prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing and therefore has failed to establish grounds for review in this tribunal. Accordingly, I find that the application for review on this ground must

**The original decision dated May 27, 2011 stands.**

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: June 28, 2011.

---

Ms. Nazareth  
Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On June 06, 2011, the Residential Tenancy Branch received an Application for Review from s.22 Landlord.

Subject:

File Number: 771817,  
Decision dated: June 28, 2011  
Rental Unit: s.22  
Nanaimo, BC

Other Party:

s.22

Tenants

### Introduction

On May 26, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order to allow an additional rent increase above the legislated annual increase amount. The tenant did not attend the hearing. The Dispute Resolution Officer dismissed the landlord's application without leave to reapply. The landlord has applied for a review of this decision.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The applicant relies on section 79(2)(b) of the *Residential Tenancy Act* (the "Act") which provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

## **Issues**

Does the applicant have relevant evidence that is new and was not available at the time of the hearing?

## **Facts and Analysis**

Residential Tenancy Policy Guideline #24 provides as follows:

*“New” evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained, such as photographs that could have been taken or affidavits that could have been sworn before the hearing took place.*

In order to successfully argue that a review hearing should be granted on the grounds of new and relevant evidence, the applicants must prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing.

In the application, the applicant must list each piece of new and relevant evidence and must explain its relevance, must explain why it was unavailable at the time of the hearing and must state in what way the decision of the dispute resolution officer may have differed if the evidence was available and introduced at the time of the hearing.

In his application for review, the landlord states:

*“The arbitrator’s decision is based on misinformation and furthermore this information was not provided by the landlord during the conference call. The arbitrator’s interpretation of matters regarding the expenses involved in maintaining the residence in a satisfactory condition is also faulty. The arbitrator is biased towards the tenant and unreasonable in implying or informing the landlord that certain measures should have been taken as standard maintenances of the property.”*

The landlord has not attached any documents to his application on the grounds of new evidence.

Upon review of the application, I find that the landlord has not submitted any new evidence. The Dispute Resolution Officer considered all the evidence before her, in the making of her decision and made her decision based on the fact that she found that the circumstances of repair did not meet the burden of proof for an additional rent increase.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

The landlord has failed to prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing and therefore has failed to establish grounds for review in this tribunal. Accordingly, I find that the application for review on this ground must

**The original decision dated May 27, 2011 stands.**

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: June 28, 2011.

---

Ms. Nazareth  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On December 28, 2011, the Residential Tenancy Branch received an Application for Review from s.22 Landlord(s).

Subject:

File Number: 784028,  
Decision dated: December 12, 2011  
Rental Unit: s.22  
Prince George, BC

Other Party:

s.22 s.22  
Tenant(s),

### Introduction

The Landlord has applied for a review of the Decision of Dispute Resolution Officer, D. Vaughn, dated December 14, 2011. The Decision upheld the Tenant's application to dismiss a Notice to End Tenancy for Cause and issued orders to the Landlord to comply with section 28 of the Act and limited the Landlord's access to the property.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

- a) A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b) A party has new and relevant evidence that was not available at the time of the original hearing.
- c) A party has evidence that the director's decision or order was obtained by fraud.

The Landlord relies on section 79 (2) (b) of the *Residential Tenancy Act* (the Act) for the reason for requesting this review stating she has evidence that was new and not available at the hearing.

## Issues

1. Has the Landlord provided new and relevant evidence that was not available at the time of the hearing?

## Facts and Analysis

The burden of proof is on the Applicant Landlord to prove the criteria for a re-hearing has been met under the Act.

The Landlord submitted into evidence the Application for Review Consideration, a copy of the original decision issued by Dispute Resolution Officer (DRO) D. Vaughn, copies of written witness statements signed by the two witnesses who were named in the evidence provided prior to the hearing, copies of the rental unit advertisement and real estate documents, e-mail correspondence dated September 3, 2011, photographs, and copies of security alarm usage from June 15, 2011 to December 27, 2011.

The application for review consideration contains information under Reasons Number C2 New and Relevant Evidence and C3 Fraud, which state the following:

- The Landlord did not have enough time to prepare witness statements as Dispute Resolution received 2 days prior to the hearing; and
- Information pertaining to original advertisements that were on the internet to which the tenants had responded to; and
- Real Estate listing information that was provided to the Tenants September 2 during their viewing of the rental unit.

In response to the Landlord's statement that she did not have enough time to prepare her evidence I note that DRO Vaughn made a finding in her December 14, 2011 decision in the fourth paragraph on page 1 that the "landlord was properly served under the Residential Tenancy Act (the "Act") and tenancy agreement".

Furthermore DRO Vaughn noted in her decision that she considered the Landlord's evidence that was faxed December 13, 2011 and was received after the hearing. DRO Vaughn noted that this evidence included "a letter containing the landlord's witnesses' names" and that "the witnesses did not attend the hearing". Therefore I find there to be insufficient evidence to support this was new evidence that could not have been provided during the hearing. Rather, the evidence supports it was not new and that the Landlord was intending to rely on these witnesses' statements even prior to the hearing.

The remaining reasons listed under section C2, as noted above, consist of evidence that was all available to the Landlord in September, long before the hearing, and this submission is simply the Landlord's attempt to reargue her case.

### Decision

Based on the aforementioned I find that the Landlord has failed to prove that she has new and relevant evidence that was not available at the time of the original hearing and therefore her application for review consideration must fail.

**I HEREBY DISMISS** the Landlord's application for review consideration in accordance with section 81(1)(b)(ii) and 81(1)(b)(iii) of the Act.

**I HEREBY ORDER** the Decision dated December 14, 2011, Stands and is of full force and effect.

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 03, 2012.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On December 28, 2011, the Residential Tenancy Branch received an Application for Review from s.22 Landlord(s).

Subject:

File Number: 784028,  
Decision dated: December 12, 2011  
Rental Unit: s.22  
Prince George, BC

Other Party:

s.22 s.22 Tenant(s),

### Introduction

The Landlord has applied for a review of the Decision of Dispute Resolution Officer, D. Vaughn, dated December 14, 2011. The Decision upheld the Tenant's application to dismiss a Notice to End Tenancy for Cause and issued orders to the Landlord to comply with section 28 of the Act and limited the Landlord's access to the property.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

- a) A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b) A party has new and relevant evidence that was not available at the time of the original hearing.
- c) A party has evidence that the director's decision or order was obtained by fraud.

The Landlord relies on section 79 (2) (b) of the *Residential Tenancy Act* (the Act) for the reason for requesting this review stating she has evidence that was new and not available at the hearing.

## Issues

1. Has the Landlord provided new and relevant evidence that was not available at the time of the hearing?

## Facts and Analysis

The burden of proof is on the Applicant Landlord to prove the criteria for a re-hearing has been met under the Act.

The Landlord submitted into evidence the Application for Review Consideration, a copy of the original decision issued by Dispute Resolution Officer (DRO) D. Vaughn, copies of written witness statements signed by the two witnesses who were named in the evidence provided prior to the hearing, copies of the rental unit advertisement and real estate documents, e-mail correspondence dated September 3, 2011, photographs, and copies of security alarm usage from June 15, 2011 to December 27, 2011.

The application for review consideration contains information under Reasons Number C2 New and Relevant Evidence and C3 Fraud, which state the following:

- The Landlord did not have enough time to prepare witness statements as Dispute Resolution received 2 days prior to the hearing; and
- Information pertaining to original advertisements that were on the internet to which the tenants had responded to; and
- Real Estate listing information that was provided to the Tenants September 2 during their viewing of the rental unit.

In response to the Landlord's statement that she did not have enough time to prepare her evidence I note that DRO Vaughn made a finding in her December 14, 2011 decision in the fourth paragraph on page 1 that the "landlord was properly served under the Residential Tenancy Act (the "Act") and tenancy agreement".

Furthermore DRO Vaughn noted in her decision that she considered the Landlord's evidence that was faxed December 13, 2011 and was received after the hearing. DRO Vaughn noted that this evidence included "a letter containing the landlord's witnesses' names" and that "the witnesses did not attend the hearing". Therefore I find there to be insufficient evidence to support this was new evidence that could not have been provided during the hearing. Rather, the evidence supports it was not new and that the Landlord was intending to rely on these witnesses' statements even prior to the hearing.

The remaining reasons listed under section C2, as noted above, consist of evidence that was all available to the Landlord in September, long before the hearing, and this submission is simply the Landlord's attempt to reargue her case.

### Decision

Based on the aforementioned I find that the Landlord has failed to prove that she has new and relevant evidence that was not available at the time of the original hearing and therefore her application for review consideration must fail.

**I HEREBY DISMISS** the Landlord's application for review consideration in accordance with section 81(1)(b)(ii) and 81(1)(b)(iii) of the Act.

**I HEREBY ORDER** the Decision dated December 14, 2011, Stands and is of full force and effect.

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 03, 2012.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On February 23, 2012, the Residential Tenancy Branch received an Application for Review from s.22 Landlord(s).

Subject:

File Number: 784781,  
Decision dated: February 14, 2012  
Rental Unit: s.22  
Nanaimo, BC

Other Party: s.22 Tenant(s),

### Introduction

The Landlord has applied for a review of the Decision and Orders of Dispute Resolution Officer R. A. Morrison, dated February 14, 2012. The Decision and Order granted a Monetary Order to the Tenant in the amount of \$1,827.98.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

- A. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- B. A party has new and relevant evidence that was not available at the time of the original hearing.
- C. A party has evidence that the director's decision or order was obtained by fraud.

The Landlord relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the Act) for the reasons for requesting this review stating he has evidence that is new and relevant and that the Dispute Resolution Officer's decision or order were obtained by fraud.

## Issues

1. Has the Landlord provided sufficient evidence to prove he has new and relevant evidence pursuant to section 79(2)(b) of the Act?
2. Has the Landlord provided sufficient evidence to support the February 14, 2012 decision and order may have been obtained by fraud pursuant to section 79(2)(c) of the Act?

## Facts and Analysis

The burden of proof is on the Applicant Landlord to prove the criteria for a re-hearing has been met under the Act.

The Landlord submitted into evidence the Application for Review Consideration, a copy of the original decision, and a copy of an e-mail that was received from the Tenant on August 17, 2011.

### **New and Relevant Evidence**

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original arbitration hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Dispute Resolution Officer;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

“New” evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with

due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

The Landlord submitted an e-mail that was sent to him August 17, 2011, which was in existence six months prior to the February 14, 2012. Therefore, this evidence does not meet the test as new and relevant evidence, as outlined above, as it was in existence at the time of the hearing. Accordingly, I find the Landlord's request for review consideration must fail on this ground.

### **Decision Obtained by Fraud**

A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to, or concealed from, the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision.

The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known or disclosed at the time of the hearing, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

The Landlord is relying on the August 17, 2011 e-mail which was sent to him from the Tenant's e-mail address and which includes the following:

*"Out of courtesy we will authorize you to keep the damage deposit of \$925 (incl interest) but we will not pay anything further or be held responsible financially for any further costs."*

*"If you want to pursue this further then we need to have it mediated by the tenancy branch at which time we will ask for the deposit back. Regards, s.22*

The Landlord states in his application for review consideration that he did not attend the hearing call and does not remember ever receiving an application and did not think the Tenants would pursue this further. He states that he "believe they tricked me because

reality is I did not pursue further as per s.22 email and I left it. This information (email) that I trusted they used it to their benefit to want \$1,827.98 so this is fraud"[sic].

After careful consideration of the aforementioned I accept this information was purposely omitted by the Tenant, that the Tenant would have known she was withholding or omitting this information from the Dispute Resolution Officer, and this information was withheld or omitted to achieve the Tenant's desired outcome. Furthermore I that the Decision and Orders may have been different if the Dispute Resolution Officer had this information before him while making his determinations. Therefore I allow the Application for Review on this basis.

### Decision

I Order that a new hearing be scheduled; **Notices of hearing are included with this review consideration decision for the Landlord to serve to the Tenant within 3 days of receipt of this decision.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

The Decision and Order made on February 14, 2012, are suspended pending the outcome of the new hearing.

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: February 29, 2012.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch





# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On February 23, 2012, the Residential Tenancy Branch received an Application for Review from s.22 Landlord(s).

Subject:

File Number: 784781,  
Decision dated: February 14, 2012  
Rental Unit: s.22  
Nanaimo, BC

Other Party: s.22 Tenant(s),

### Introduction

The Landlord has applied for a review of the Decision and Orders of Dispute Resolution Officer R. A. Morrison, dated February 14, 2012. The Decision and Order granted a Monetary Order to the Tenant in the amount of \$1,827.98.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

- A. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- B. A party has new and relevant evidence that was not available at the time of the original hearing.
- C. A party has evidence that the director's decision or order was obtained by fraud.

The Landlord relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the Act) for the reasons for requesting this review stating he has evidence that is new and relevant and that the Dispute Resolution Officer's decision or order were obtained by fraud.

## Issues

1. Has the Landlord provided sufficient evidence to prove he has new and relevant evidence pursuant to section 79(2)(b) of the Act?
2. Has the Landlord provided sufficient evidence to support the February 14, 2012 decision and order may have been obtained by fraud pursuant to section 79(2)(c) of the Act?

## Facts and Analysis

The burden of proof is on the Applicant Landlord to prove the criteria for a re-hearing has been met under the Act.

The Landlord submitted into evidence the Application for Review Consideration, a copy of the original decision, and a copy of an e-mail that was received from the Tenant on August 17, 2011.

### **New and Relevant Evidence**

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original arbitration hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Dispute Resolution Officer;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

“New” evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with

due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

The Landlord submitted an e-mail that was sent to him August 17, 2011, which was in existence six months prior to the February 14, 2012. Therefore, this evidence does not meet the test as new and relevant evidence, as outlined above, as it was in existence at the time of the hearing. Accordingly, I find the Landlord's request for review consideration must fail on this ground.

### **Decision Obtained by Fraud**

A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to, or concealed from, the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision.

The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known or disclosed at the time of the hearing, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

The Landlord is relying on the August 17, 2011 e-mail which was sent to him from the Tenant's e-mail address and which includes the following:

*"Out of courtesy we will authorize you to keep the damage deposit of \$925 (incl interest) but we will not pay anything further or be held responsible financially for any further costs."*

*"If you want to pursue this further then we need to have it mediated by the tenancy branch at which time we will ask for the deposit back. Regards, s.22"*

The Landlord states in his application for review consideration that he did not attend the hearing call and does not remember ever receiving an application and did not think the Tenants would pursue this further. He states that he "believe they tricked me because

reality is I did not pursue further as per s.22 email and I left it. This information (email) that I trusted they used it to their benefit to want \$1,827.98 so this is fraud"[sic].

After careful consideration of the aforementioned I accept this information was purposely omitted by the Tenant, that the Tenant would have known she was withholding or omitting this information from the Dispute Resolution Officer, and this information was withheld or omitted to achieve the Tenant's desired outcome. Furthermore I that the Decision and Orders may have been different if the Dispute Resolution Officer had this information before him while making his determinations. Therefore I allow the Application for Review on this basis.

### Decision

I Order that a new hearing be scheduled; **Notices of hearing are included with this review consideration decision for the Landlord to serve to the Tenant within 3 days of receipt of this decision.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

The Decision and Order made on February 14, 2012, are suspended pending the outcome of the new hearing.

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: February 29, 2012.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78., as amended.*

On March 06, 2012, the Residential Tenancy Branch received an Application for Review from s.22 Landlord(s),

Subject:

File Number: 780873,  
Decision dated: December 12, 2011  
Rental Unit: s.22  
Richmond, BC

Other Party: s.22 Tenant(s),

### Introduction

This is an application filed by the Landlord on March 6, 2012 for review of a decision of P.J.Nadler, Dispute Resolution Officer, dated December 12, 2011.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. A party has new and relevant evidence that was not available at the time of the original hearing.
- c. A party has evidence that the director's decision or order was obtained by fraud.

In this application the Landlord relies on all three sections under section 79(2) of the Act, stating they were unable to attend the original hearing, they have new and relevant evidence, and they have evidence that the director's decision or order was obtained by fraud.

### Issues

Does this matter remain within the jurisdiction of the *Residential Tenancy Act*?

### Facts and Analysis

The Landlord's application for review consideration states that the Landlord "only found out about this decision when my bank account was garnished" [sic]. The application further states that the Landlord's bank informed them that their bank account was garnished by the Provincial Court.

Section 85 (2) of the *Residential Tenancy Act* stipulates that a decision or an order described in subsection (1) may be filed in the Provincial Court and **enforced as a judgment or an order of that court** after:

- (a) a review of the director's decision or order has been
    - (i) refused or dismissed, or
    - (ii) concluded, or
  - (b) the time period to apply for a review has expired.
- [Emphasis added]

In this case the evidence supports that the Landlord's bank account was garnished by order of the Provincial Court. Therefore, jurisdiction of this matter lies with the Provincial Court.

### Decision

I HEREBY DISMISS the application for review consideration, for want of jurisdiction.

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: March 20, 2012.

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L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 781427**  
**Additional File(s):781052**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**NEW STAR REALTY LTD,** s.22  
s.22 **(OWNER'S AGENT), Landlord(s),**  
Applicant(s)/Respondent(s)

And

s.22  
s.22 **, and**  
**Tenant(s),**  
Applicant(s)/Respondent(s)

Regarding a rental unit at: s.22 Surrey, BC

Date of Hearing: November 01, 2011 and November 28, 2011, by conference call.

Date of Decision: November 28, 2011

Attending:

For the Landlord:

For the Tenant:

s.22

## **DECISION**

### **Dispute Codes**

MND MNSD FF  
MNSD OLC ERP RP PSF LRE RR O FF

### **Preliminary Issues**

At the outset of the November 1, 2011 hearing the Agent for the Tenants requested an adjournment because the Tenants were currently

s.22

s.22

The Landlord's Agent acknowledged

s.22

resided at the rental unit, s.22 She agreed to adjourn the hearing and requested that it be reconvened between November 23, 2011 and November 30, 2011 so as not to delay this matter any longer than necessary.

As per the aforementioned I agreed to adjourn the hearing to a future date pursuant to the *Residential Tenancy Branch Rules of Procedure* # 6.3 and informed the parties they would be sent a Notice of Reconvened Hearing to the addresses listed on their applications.

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants. The hearing convened November 1, 2011 and reconvened for this session on November 28, 2011.

The Landlords filed seeking a Monetary Order for damage to the unit, to keep all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking a Monetary Order for the return of their security and or pet deposits and Orders to have the Landlord comply with the Act, regulation and or tenancy agreement, make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to provide services or facilities required by law, to suspend or set conditions on the Landlords' right to enter the rental unit, to allow the Tenants reduced rent for repairs, services or facilities agreed upon but not provided, for

other reasons and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

#### Issue(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain Orders pursuant to sections 32, 62, 65, 67, and 72 of the *Residential Tenancy Act*?
3. Have the Tenants breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
4. If so, have the Landlords met the burden of proof to obtain Orders pursuant to sections 67, and 72 of the *Residential Tenancy Act*?

#### Background and Evidence

The parties agreed that they entered into a tenancy agreement that began on July 15, 2011 for a fixed term of two years that is set to expire on July 31, 2013. Rent is payable on the first of each month in the amount of \$2,200.00 and the Landlord currently holds the security deposit in trust in the amount of \$1,100.00 that was paid by the Tenants on July 1, 2011. The Tenants paid a pet deposit of \$1,100.00 and put a stop payment on that cheque so there is no pet deposit being held by the Landlords.

During the course of the November 28, 2011 hearing the parties agreed to settle these matters.

#### Analysis

The parties agreed to settle these matters on the following conditions:

- 1) The Tenants agree to withdraw their application for dispute resolution; and
- 2) The Landlords agree to withdraw their application for dispute resolution; and
- 3) The parties mutually agree to end this tenancy effective **February 29, 2012 at 1:00 p.m.**; and
- 4) The Landlords agree that as compensation for this mutual agreement to end the tenancy the Tenants will not be required to pay rent for February 2012, (that is to

say the Tenants will occupy the rental unit rent free for the month of February 2012); and

- 5) The parties agree to abide by the *Residential Tenancy Act*, regulation, and tenancy agreement for the duration of this tenancy; and
- 6) The Tenants agree to ensure the yard is returned to the condition it was in at the start of the tenancy and will ensure all animal cages and structures are removed from the property by the end of the tenancy; and
- 7) The Landlords agree there was pre existing damage to the carpets which occurred prior to the start of this tenancy with the presence of cat and or animal urine in the carpets that became more evident after the carpets were cleaned; and
- 8) The Landlords agree there was pre existing damage to the pool of a ripped pool liner that occurred prior to the start of this tenancy, and
- 9) The Landlords agree to return to the Tenants their post dated rent cheques starting with February 1, 2012 and for the remainder of the fixed term to July 1, 2013, via registered mail no later than December 15, 2011; and
- 10) The Tenants agree to allow the Landlords access to the rental unit for showings after receipt of 24 hour notice of entry via e-mail to which they will send a reply to the Landlord, as soon as possible, via e-mail confirming they received the request; and
- 11) The Landlord agrees that the 24 hour e-mail notification of entry will not be acted upon until they receive an e-mail response from the Tenant's confirming receipt of their request; and
- 12) The Landlords agree to request access in accordance with the *Residential Tenancy Act* between the hours of 8:00 a.m. and 9:00 p.m.; and
- 13) The Landlords agree to have a certified furnace repair person, who speaks English, attend the rental unit no later than December 2, 2011, to ensure the furnace is operational and safe for use as soon as possible.

In support of this agreement I will issue the Landlords an Order of Possession effective February 29, 2012, at 1:00 p.m.

Both parties agreed to settle this matter; therefore, they are responsible for the cost of filing their own application.

### Conclusion

The Landlords' decision will be accompanied by an Order of Possession effective **February 29, 2012** at 1:00 p.m.

I have included with this decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

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: November 28, 2011.

---

L. Bell, Dispute Resolution Officer  
Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) for information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: Enforcing a Monetary Order
- How and when to have a decision or order clarified or corrected:  
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

