



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlords' Application for Dispute Resolution, in which the Landlords have made application for a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The female Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the rental unit on September 17, 2008. A tracking number was provided. The Canada Post website shows the mail was delivered on September 23, 2008. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

At the beginning of the hearing I granted the Landlords' request to amend the Application for Dispute Resolution to show the address of the rental unit and the spelling of the Tenant's name. The amended dispute address and spelling of the Tenant's name appear on this decision and Order.

I denied the Landlords' request to amend the Application for Dispute Resolution to include claims for cleaning the rental unit. The male Landlord stated that they advised the Tenant that they would be claiming for costs for cleaning by leaving documentation regarding this claim at the rental unit on October 03, 2008. As the Tenant was no longer residing in the rental unit on October 03, 2008, I find that he was not made aware of this portion of the application. Therefore I refuse to hear the Landlords' claims for cleaning the rental unit, as they did not properly inform the Tenant of the particulars of this monetary claim. The Landlords retain the right to file another Application for Dispute Resolution for the costs of cleaning the rental unit.

### Issue(s) to be Decided

The issues to be decided are whether the Landlords are entitled to a monetary order for unpaid rent, for a monetary order for damage to the rental unit; for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, *Regulation*, or tenancy agreement; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The male Landlord stated that this tenancy began on May 31, 2008; that the Tenant was required to pay monthly rent of \$600.00; and that the Tenant paid a security deposit of \$300.00 on May 31, 2008.

The Landlords submitted a copy of a decision made by \_\_\_\_\_, a Dispute Resolution Officer, on September 11, 2008, in which she granted the Landlords an Order of Possession that became effective one day after it was served upon the Tenant. The female Landlord stated that the Order of Possession was posted on the front door of the rental unit on September 11, 2008.

The female Landlord stated that the Tenant did not vacate the rental unit until September 26, 2008, when a Writ of Possession was executed by a bailiff. The Landlords submitted a receipt from \_\_\_\_\_ Bailiffs, in the amount of \$1,162.22, which shows that the Landlords paid to have the Writ of Possession executed on that date.

The Landlords submitted a receipt, in the amount of \$111.00, which shows that they paid a filing fee of \$80.00 for the Writ of Possession and \$31.00 for swearing an affidavit in support of the Writ.

The female Landlord stated that the Tenant did not pay rent for September of 2008, for which the Landlords are seeking compensation in the amount of \$600.00. The male Landlord stated that the need to repair the rental unit, and the failure of the Tenant to vacate the rental unit until September 26, 2008, prevented them from renting the unit in October. The Landlords are claiming compensation, in the amount of \$600.00, for loss of revenue for the month of October.

The Landlords are claiming compensation, in the amount of \$75.00, for the cost of replacing two locks to the rental unit, as the Tenant did not return the keys to the rental unit. The male Landlord stated that he replaced the locks with locks he had in stock, and that he installed the locks himself.

The Landlords are claiming compensation, in the amount of \$694.77, for damages caused to the rental unit when the sewer backed up. The male Landlord stated that the Tenant contacted them on July 31, 2008 to advise that the sewer was backing up into the rental unit. The Landlord stated that when he arrived at the rental unit on that date he found that the Tenant had removed the sewer cap, which allowed the sewage to back up into the rental unit.

The Landlords submitted a copy of a receipt, dated July 31, 2008, which indicates that they paid a plumber \$194.77 for unclogging the main sewer line in the rental unit. The receipt states that the sewer line was clogged by a sanitary napkin.

The evidence shows that there is a female tenant living above the Tenant in this residential complex.

The male Landlord stated that when the sewage backed into the rental unit it caused damage in the amount of \$6,192.51. He stated that \_\_\_\_\_ insurance is paying for the repairs, but the Landlords must pay the deductible of \$500.00. The Landlord submitted an email from a contractor that states the repairs will be \$6,192.51.

### Analysis

I find that the Landlords incurred expenses, in the amount of \$1,237.22, which are directly related to the Tenant's failure to vacate the rental unit as required by the Order of Possession issued by \_\_\_\_\_ on September 11, 2008. As the Tenant did not comply with Ms. Gelfrand's Order, I find that he must compensate the Landlord for the costs that result from the Tenant's failure to vacate the rental unit when he was served with the Order of Possession. In these circumstances, I find that the Tenant must compensate the Landlord for the cost of hiring the bailiffs, for the cost of filing for the Writ of Possession, and for the cost of swearing an affidavit required to obtain the Writ of Possession.

In the absence of evidence to the contrary, I find that the Tenant did not pay rent for September, and that he must pay the Landlord \$600.00 for outstanding rent. I also find that the Tenant's failure to repair the damage he caused to the rental unit and his failure to vacate the rental unit as required by the Order of Possession prevented the Landlords from renting the unit in October. Therefore, I find that the Tenant must compensate the Landlord, in the amount of \$600.00, for loss of income from October of 2008.

In the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to return the keys to the rental unit. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. I find that \$75.00 for replacing two locks to the rental unit is reasonable compensation in these circumstances.

I find that the Landlords submitted insufficient evidence to establish that the Tenant is responsible for blocking the main sewer line. In reaching this conclusion, I was strongly influenced by the fact that the blockage was in the main sewer line, not the plumbing within the rental unit. I find that the Landlord has submitted insufficient evidence to cause me to conclude that the blockage was caused by the Tenant, as it could just as easily have been caused by the female tenant living in the upper rental unit. On this basis, I dismiss the Landlords application for compensation, in the amount of \$194.77, for clearing the blockage in the sewer line.

In the absence of evidence to the contrary, I find that the Tenant tampered with the sewer lines on July 31, 2008, which caused sewage to drain back into the rental unit. Section 32(2) of the Act stipulates that tenants are responsible for repairing damage caused by the actions of the tenant or a person permitted on the property by the tenant. In these circumstances, I find that the Tenant is responsible for the damage to the rental unit that occurred when he removed the cap to the sewer line. In the absence of evidence to the contrary, I accept the testimony of the Landlords when they state that they are paying a \$500.00 deductible to have these damages repaired, and I find that the Tenant is responsible for this cost.

The Landlords withdrew their application for compensation for storage fees, in the amount of \$65.00.

I find that the Landlords' application has merit, and I find that the Landlords are entitled to recover the filing fee from the Tenant for the cost of filing this Application for Dispute Resolution.

I dismiss the Landlords' application to recover the filing fee from the Tenant for the cost of filing Application for Dispute Resolution \_\_\_\_\_. I find that \_\_\_\_\_ has already awarded costs to the Landlords in that matter and I can not address that issue at this hearing.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,062.22, which is comprised on \$600.00 in unpaid rent for September of 2008, \$600.00 for loss of rent for October of 2008, \$1,237.22 for expenses related to executing a Writ of Possession, \$575.00 in damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorized the Landlords to retain the security deposit plus interest, in the amount of \$301.86 in partial satisfaction of this monetary claim. Based on these determinations I grant the Landlord a monetary Order for the amount \$2,760.36. In the

event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: October 28, 2008