



# Dispute Resolution Services

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

## DECISION

Dispute Codes: MNR, MNDC, MNSD, & FF

### Introduction:

This hearing dealt with a landlord's application for a monetary claim related to loss or damage under the *Act*. Although the tenants failed to appear for the hearing on October 19, 2008, they appeared for the hearing on November 19, 2008. The original hearing was adjourned because the landlord's evidence was not on file even though the landlord provided it within the allowable timeframes.

### Issues to be Determined:

Is the landlord entitled to a monetary claim related to loss of rent and damage to the rental unit? Is the landlord entitled to retain the tenants' security deposit plus interest in partial satisfaction of this claim?

### Background and Evidence:

This tenancy began on February 15, 2008 as a fixed term lease ending on February 15, 2009. The monthly rent was \$2,200.00 and a security deposit of \$1,100.00 was paid. The tenants sublet the rental unit for the months of June, July and August 2008. However, they also failed to pay the rent for these months. The tenants also agreed to find the landlord a new long term tenant effective September 1, 2008.

This did not happen and the tenants vacated the rental unit effective September 1, 2008 without fulfilling their lease agreement. The landlord is seeking the following damages:

Outstanding move in fee from strata	\$100.00
Outstanding rent for June 2008	\$97.00
Outstanding rent owed for July 2008	\$399.25
Outstanding rent for August 2008	\$2,395.00
Outstanding rent for September 2008	\$2,395.00
Loss of rental income from October 1 to 15 <sup>th</sup> , 2008	\$1,159.00
Cost to replace FOBS and VING cards for accessing rental property	\$260.00
Removal of garbage, furniture and debris left by tenants	\$950.00
Repair to walls of rental unit – drywall patching and re-painting	\$3,000.00
Replacement of flooring in rental unit	\$3,800.00

Outstanding utility bill	\$150.17
Cost to re-rent unit with property management company	\$375.00
Recovery of Filling fee	\$100.00
<b>TOTAL</b>	<b>\$12,257.42</b>

I have not included fees requested by the landlord for delivery of documents. I accept my calculations as recorded in this decision.

The tenants dispute the amounts claimed by the landlord arguing that the landlord is charging excessive amounts for the work completed. The tenants also argue that the rent is \$2,200.00. The tenants acknowledge that they failed to pay rent however do not believe that they are responsible for the landlord's lost rental revenue.

#### Analysis:

I accept the evidence contained in the tenancy agreement that the monthly rent was \$2,200.00 and the security deposit paid was \$1,100.00. I do not accept the landlord's request for rental income above \$2,200.00. I also find that the costs the landlord has requested for repairing the walls to the rental unit to be excessive. Although I acknowledge that the landlord felt that he had to immediately find a contractor to repair the damage, the landlord still has a duty to mitigate his damages. The landlord did not search for other estimates to find the most reasonable cost. I am also not satisfied based on the evidence before me that the walls required \$3,000.00 in repairs. The evidence does not support that the extent of damage was this severe. I also do not accept that the flooring in the rental unit had to be replaced. Again the photographic evidence does not support this conclusion. Although the carpeting was only three years old and there is staining, I am not satisfied that the carpets could not be cleaned. A landlord must take into account that fixtures, such as carpeting or wooden flooring will sustain damage during a tenancy. It is not reasonable to replace flooring every time there is damage to the flooring. I also note that the landlord did not include receipts for the amount of damages he is claiming.

I am satisfied, based on the photographs submitted by the landlord that the walls suffered minor dents and scratches. While I am satisfied that these dents and scratches were more than regular wear I am not satisfied that they required the rental unit to be re-painted. I reject the landlord's claim of \$3,000.00. I find that the landlord is reasonably compensated for this damage in the sum of \$500.00.

Again, respecting the carpets, I am satisfied that there is damage beyond normal wear and tear. However, I do not accept that the damage was so significant as to require the replacement of the carpets. I find that the landlord is compensated for this damage for the sum of \$300.00 which is a reasonable sum to thoroughly clean the carpets.

I do not accept the landlord's claim for \$950.00 to remove the tenants' abandoned possessions. I find that the photograph evidence does not support this claim. Although I find that the tenants did abandon some items I am not satisfied that these items could

reasonable cost \$950.00 to remove. I find that the landlord is reasonably compensated for removal of the tenants' possessions and cleaning for the sum of \$500.00.

I do not accept the evidence of the tenants that the keys and FOBS to the rental unit were returned. I accept the landlord's claim for replacement cost of \$260.00. I also accept the landlord's claim for outstanding rent for June and July and the move in fee charged by the strata.

I also accept the landlord's claim for lost rent for August, September and October 2008, but at the monthly rent of \$2,200.00 pursuant to the tenancy agreement. I do not find that the landlord is entitled to any lost rental revenue beyond this point. I also accept that the fee for \$375.00 to hire a property management company is a reasonable expense given the tenants' breach of the fixed term lease. I also accept the landlord's request to recover the \$100.00 filling fee from the tenants.

I find that the landlord has established a total monetary claim of \$9,363.35. From this sum I Order that the landlord may retain the tenants' security deposit plus interest of \$1,114.07 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance of **\$8,249.18**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

I have granted the landlord's application in part. Although I have found the tenants in breach of the tenancy agreement and responsible for damages I have not accepted the amounts claimed by the landlord. I have awarded the landlord for reasonable costs to repair the rental unit and to recover loss of income due to the breach of contract by the tenants.

Dated December 22, 2008.

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Dispute Resolution Officer