



# Dispute Resolution Services

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

## Decision

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

## Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; a monetary Order for damage to the rental unit; 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 Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the forwarding address provided by the Tenant at the end of the tenancy, as noted on the Application, on December 09, 2008. A tracking number was provided. The Canada Post website shows the mail was returned to the sender on December 31, 2008. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

## Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an a monetary Order for unpaid rent; to a monetary Order for loss of revenue; to a monetary Order for

damage to the rental unit; to keep all or part of the security and pet deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

### **Background and Evidence**

The Agent for the Landlord stated that this tenancy began on September 01, 2008; that the Tenant is required to pay monthly rent of \$990.00; that the Tenant paid a security deposit of \$495.00 on August 11, 2008; and that the Tenant paid a pet damage deposit of \$495.00 on August 11, 2008.

The Agent for the Landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 22, 2008, was personally served on the Tenant on November 12, 2008. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The Agent for the Landlord stated that the Tenant still owes \$990.00 in rent from November of 2008.

The Landlord is claiming compensation for unpaid rent from December of 2008, as they had insufficient time to find a new tenant for the rental unit. The Agent for the Landlord stated that there is an on-going advertisement for rental units in this residential complex due to the fact that there are several vacancies in the complex, although there is not an advertisement related to this specific rental unit. He stated that the rental unit has not yet been rented to new tenants.

The Agent for the Landlord stated that the Tenant also owes a late fee of \$25.00 for not paying his rent on time in November. Although the Agent did not provide a complete copy of the tenancy agreement, the Agent quoted section 10 of the rules and regulations, which forms part of this tenancy agreement, in which the Tenant agreed to pay a late fee of \$20.00 whenever he is late paying rent.

The Landlord is claiming compensation, in the amount of \$377.98, for cleaning the rental unit. The Landlord submitted a cleaning estimate in the following amounts:

- Wash bathroom ceiling - \$30.00
- General cleaning - \$100.00
- Clean bed and miscellaneous garbage - \$100.00
- Clean carpets – \$129.99
- GST - \$17.99.

The Agent for the Landlord stated that the carpets required cleaning, that the bathroom ceiling needed to be washed; that garbage needed to be removed and that there was a small amount of general cleaning required.

The Landlord submitted a condition inspection report that was completed at the end of the tenancy, in the absence of the Tenant, which indicates that the carpets required cleaning and that the bathroom ceiling needed to be washed. The report indicated that all other areas of the rental unit were clean and in good condition.

## **Analysis**

In the absence of evidence to the contrary, I find that the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on November 22, 2008, pursuant to section 46 of the *Act*. I find that the Tenant did vacate the rental unit on November 21, 2008, pursuant to the Notice to End Tenancy that was served upon him.

In the absence of evidence to the contrary, I find that the Tenant has not paid rent in the amount of \$990.00 for November of 2008, and that the Landlord is entitled to compensation in that amount.

I find that the Tenant failed to comply with section 26(1) of the *Act* when he failed to pay rent that was due, which resulted in the end of the tenancy. The *Act* authorizes me to award compensation to the Landlord for any damages that flow from the Tenant's failure to comply with the *Act*. In the circumstances before me, I am not satisfied that the Landlord is entitled to compensation for loss of revenue for the month of December. In reaching this conclusion, I was strongly influenced by the fact that there are several rental units empty in this residential complex and it is likely that the rental unit would not have been rented for December 01, 2008 even if the Tenant had provided the Landlord with a full month's notice of his intent to vacate. In short, I find it is the lack of potential tenants that has caused the loss of revenue from December, not that the Tenant provided inadequate notice of his intent to vacate.

In the absence of evidence to the contrary, I find that the Tenant did not pay his rent when it was due in November and that the Tenant agreed, in writing, to pay a late fee of \$25.00 whenever he is late paying his rent. On this basis, I find that the Landlord is entitled to collect a late fee of \$25.00 from November.

Section 21 of the Act stipulates that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the tenant or the landlord has a preponderance of evidence to the contrary. In the circumstances before me, I find that the condition inspection report indicates that the unit was reasonably clean with the exception of the bathroom ceiling and the carpets. I find that the report establishes that these items needed cleaning.

I find that the Tenant failed to comply with section 37(2) of the Act when he failed to clean the carpets and the bathroom ceiling at the end of the tenancy, and that he must compensate the Landlord for the cost of cleaning these areas. The evidence shows that the cost of cleaning the carpets was \$129.99 and the cost of cleaning the ceiling was \$30.00, plus GST in the amount of \$7.99, and I find that the Landlord is entitled to compensation for cleaning in the amount of \$167.98.

I find that the Landlord has submitted insufficient evidence to establish that the rental unit needed general cleaning or that garbage was left behind. I base this conclusion on the fact that the condition inspection report, that does not indicate this cleaning was required, is presumed to carry greater evidentiary weight than the verbal evidence of the Agent for the Landlord, particularly when the report was completed by the Landlord or an agent for the landlord. On this basis, I dismiss the Landlord's claim for general cleaning and garbage disposal.

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

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$497.90, in partial satisfaction of the monetary claim. The Landlord is not

authorized to retain the pet damage deposit, as section 38(7) only authorizes the Landlord to retain the pet damage deposit for damages that were caused by the pet.

### **Conclusion**

I find that the Landlord has established a monetary claim, in the amount of \$1,232.98, which is comprised on \$990.00 in unpaid rent, \$25.00 for a late fee, \$167.98 for cleaning, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of \$497.90, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$735.08. 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.

Dated: January 27, 2009