



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

MNR, MND, MNDC, MNSD, and 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 damage to the rental unit; a monetary Order for money owed or compensation for damage or loss; 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 male Landlord originally stated that he personally served the male Tenant named on this Application for Dispute Resolution Application with copies of the Application for Dispute Resolution Package and Notice of Hearing on January 14, 2009. When it was pointed out to him that the Application for Dispute Resolution was not filed until January 15, 2009, he asked the female Landlord to join the teleconference, who stated that the documents were not served until January 15, 2009 at approximately 1700 hours. The male Landlord subsequently amended his testimony and stated that he served the documents to the male Tenant on January 15, 2009. These documents are deemed to have been served on the male Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing.

The landlord has applied for a monetary Order, which requires that the landlord serve each respondent with copies of the Application for Dispute Resolution Package and Notice of Hearing, as set out under Section 3.1 of the Residential Tenancy Branch Rules of Procedures. As the Landlord did not serve the female Tenant named on the Application for Dispute Resolution with copies of the Application for Dispute Resolution Package and Notice of Hearing, the Landlord was given the opportunity to amend or withdraw the Application for Dispute Resolution. The male Landlord asked to amend the Application for Dispute Resolution to include only the male tenant who has been properly served with notice of this hearing. The Application for Dispute Resolution has been amended in accordance with the request of the Landlord.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to a monetary Order for late fees; to a monetary Order for loss of revenue; to a monetary Order for damages to the rental unit; to keep all or part of the security 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 male Landlord stated that this tenancy began on December 01, 2007 and that the Tenants were required to pay monthly rent of \$750.00.

The male Landlord stated that the male Tenant provided verbal notice of his intent to vacate the rental unit on January 04, 2009. When it was pointed out to the male Landlord that the written documentation submitted with the Application for Dispute Resolution indicated that the verbal notice was provided on January 01, 2009, the male Landlord stated that these discrepancies "didn't matter" and that his written evidence was accurate.

The female Landlord stated that the male Tenant provided verbal notice of his intent to vacate the rental unit on January 01, 2009. She stated that the male Tenant subsequently provided written notice of his intent to vacate the rental unit on either January 4<sup>th</sup> or 5<sup>th</sup>. A copy of that written notice was submitted in evidence.

The male Landlord stated that the Tenants paid a security deposit of \$275.00 on December 01, 2007. The female Landlord stated that the deposit was paid when the female Tenant moved into a different rental unit in the same residential complex and was transferred over to this rental unit at the beginning of this new tenancy. Neither Landlord could state when the female Tenant originally paid the security deposit.

The Landlord was directed to submit a copy of the tenancy agreement that the female Tenant entered into when she first moved into this residential complex. The Landlord submitted a copy of that tenancy agreement, via fax, on March 18, 2009. This tenancy agreement shows that the female Tenant paid a security deposit of \$275.00 on December 26, 2006.

The Landlord also submitted a copy of the tenancy agreement that these Tenant entered into on December 01, 2007. This tenancy agreement does not show that a security deposit was paid on December 01, 2007.

The Landlord is claiming compensation for unpaid rent, in the amount of \$865.00. In her written submission the female Landlord stated that the Tenants owe \$115.00 from December of 2008. She further stated that the Tenants did not pay any rent for January of 2009 and, since they did not give proper notice, they are responsible for rent for all of January.

The Landlord is claiming compensation, in the amount of \$750.00, for loss of revenue from the month of February of 2009. At the hearing the male Landlord stated that they have not attempted to find new tenants for the rental unit, as they are in the process of repairing the rental unit.

The Landlord is claiming compensation, in the amount of \$25.00, because the Tenants did not pay their rent when it was due on January 01, 2009.

The Landlord is claiming compensation, in the amount of \$262.50, for cleaning the suite and painting the cupboards. The male Landlord stated that the cupboards needed to be repainted, as the Tenants had painted them blue. The Landlord submitted photographs that show the rental unit required cleaning and that the cupboards were blue. The male Landlord was unable to specify how much time was spent cleaning and how much time was spent painting, but he stated that it took a total 7.5 hours to complete the two tasks.

The Landlord is claiming compensation, in the amount of \$35.00, for the one hour it took to dispose of a couch and other miscellaneous items that were left in the rental unit. The Landlord submitted a photograph of a couch that was left in the rental unit.

The Landlord is claiming compensation, in the amount of \$42.50, for a disposal fee. The male Landlord stated that this fee was incurred when the couch was disposed of. The female Landlord provided no evidence in relation to this claim. The Landlord did not submit a copy of a receipt for the disposal fee.

The Landlord is claiming compensation, in the amount of \$15.00, because the keys to the rental unit were not returned. The female Landlord stated that the tenancy agreement requires the Tenants to pay a \$15.00 fee if all the keys to the rental unit are not returned.

The Landlord has applied for an Order authorizing them to serve the male Tenant by posting documents to the front door of the rental unit.

### Analysis

I find that the evidence given by the male Landlord is highly unreliable. In reaching this conclusion, I considered the following:

- He originally stated at the hearing that he served the male Tenant with copies of the Application for Dispute Resolution Package and Notice of Hearing on January 14, 2009, although he did not receive those documents until after that date
- He amended his testimony regarding the date service of the Application for Dispute Resolution Package and Notice of Hearing after conferring with the female Landlord
- He originally stated that the male Tenant provided verbal notice of his intent to vacate the rental unit on January 04, 2009
- He amended his testimony regarding the date he received verbal notice after it was pointed out that the written documentation submitted with the Application for Dispute Resolution indicated that the verbal notice was provided on January 01, 2009
- He became defensive and frustrated when the discrepancies between his testimony and the written evidence was noted, and he stated that he believed the discrepancies “didn’t matter”
- He was adamant that the Tenants paid their security deposit on December 01, 2007, and did not alter his testimony even when the female Landlord gave conflicting evidence
- At the hearing he specifically stated that the tenancy agreement relating to this tenancy specified that the security deposit was paid on December 01, 2007, which is not accurate.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

In the absence of evidence to the contrary, I accept the evidence provided by the female Landlord that indicates the Tenants owe rent, in the amount of \$115.00, from December of 2008. I therefore find that the Landlord is entitled to a monetary Order for that amount.

In the absence of evidence to the contrary, I accept the evidence provided by the female Landlord that indicates the Tenants did not provide proper notice of their intent to vacate the rental unit on January 04, 2009 and that they did not pay rent for January of 2009.

I find that the Tenants did not provide the Landlord with notice of their intent to vacate the rental unit in accordance with section 45 of the *Act*. I find that the Tenants’ actions prevented the Landlord from finding new tenants for the month of January, as the Landlord did not have reasonable notice that the rental unit would be vacant. I find that the Landlord is therefore entitled to compensation for loss of revenue for January of 2009, in the amount of \$750.00.

I find that the Landlord is not entitled to compensation for loss of revenue for the month of February, as the Landlord did not make any attempts to find new tenants for that month. In reaching this decision, I was guided by section 7(2) of the *Act*, which requires landlords who claim compensation for damage or loss to do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord has not made reasonable efforts to find new tenants for February of 2009 and that the Tenants are not, therefore, liable for the subsequent loss of revenue.

Section 7 of the Residential Tenancy Regulation stipulates that a landlord may charge a late fee of \$25.00 only if the tenancy agreement provides for that fee. Upon reviewing the tenancy agreement that relates to this tenancy, I was unable to determine that the Tenants agreed to pay a late fee. On this basis, I dismiss the Landlord's application for a \$25.00 late fee.

In the absence of evidence to the contrary, I find that the rental unit was not properly cleaned at the end of the tenancy and that the cupboards were painted by the Tenants during the tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to clean the rental unit and restore the cupboards to their original condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*.

I find that the request to be compensated for 7.5 hours of labour is reasonable for cleaning the rental unit, based on the photographs submitted by the Landlord. I find that the request to be compensated at a rate of \$35.00 per hour is not reasonable, considering the nature of the labour. In reaching this conclusion, I note that the Landlord did not submit a receipt to show he paid \$35.00 per hour for this work to be completed. I am also guided by section 7(2) of the *Act*, which, in my view, compels the Landlord to incur only reasonable costs for repairs. On this basis, I grant the Landlord compensation for 7.5 hours of labour at \$20.00 per hour which I find to be more reasonable remuneration for labour of this nature, for a total of \$150.00.

Based on the photograph provided by the Landlord, I find that the Tenants left a couch in the rental unit. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to remove all of their personal items from the rental unit. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*.

I find that the request to be compensated for 1 hour of labour is reasonable. I find that the request to be compensated at a rate of \$35.00 per hour is not reasonable, considering the nature of the labour. In reaching this conclusion, I note that the Landlord did not submit a receipt to show he paid \$35.00 per hour to have the couch discarded. I am also guided by section 7(2) of the *Act*, which, in my view, compels the Landlord to incur only reasonable costs for repairs. On this basis, I grant the Landlord

compensation for 1 hour of labour at \$20.00 per hour which I find to be more reasonable remuneration for labour of this nature, for a total of \$20.00.

In view of my finding that the male Landlord's evidence is unreliable, and in the absence of documentary evidence that shows the Landlord incurred a disposal fee of \$42.50, I dismiss the Landlord's application for compensation in that amount. In reaching this conclusion, I was strongly influenced by the lack of documentary evidence that corroborates that male Landlord's statement.

Upon reviewing the tenancy agreement that relates to this tenancy, I was unable to determine that the Tenants agreed to pay a fee if they neglected to return their keys. On this basis, I dismiss the Landlord's application for a \$15.00 fee for not returning the keys.

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 \$283.34, in partial satisfaction of the monetary claim.

As the Tenants are no longer residing at this rental unit, I hereby deny the Landlord's application for authorization to serve the male Tenant any documents by posting them on the front door of this rental unit.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,085.00, which is comprised on \$115.00 in unpaid rent, \$750.00 in loss of revenue, \$170.00 in damages, 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 \$283.34, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$801.66. 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: March 20, 2009

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