



# **Dispute Resolution Services**

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

## **DECISION**

**Dispute Codes:** MNSD, MNDC, MNR and FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for unpaid rent/loss of rent, court bailiff fees, the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite being served with the Notice of Hearing sent by registered mail on January 28, 2009, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

### **Issue(s) to be Decided**

This matter requires a decision on whether the landlord is entitled to a Monetary Order for the claims submitted.

## **Evidence and Analysis**

This tenancy ran from July 1, 2008 to January 30, 2009 when the tenants abandoned the rental unit after failing to honour a two-day Order of Possession issued on December 12, 2008. Rent was \$1,600 per month and the landlord held a security deposit of \$800 paid on or about July 1, 2008.

During the hearing, the landlord gave evidence that she currently holds a Monetary Order for unpaid rent for November and December, although the December rent was paid subsequent to the hearing. That Monetary Order remains enforceable for the unsatisfied balance.

In the present hearing, the landlord claims and I find as follows:

**January rent and February/March loss of rent.** The landlord gave evidence that the tenants had not given notice, returned keys, provided a forwarding address or paid the rent for January 2009. She stated that, as a result of the lack of notice and the condition in which the rental unit was left, she would not have been able to get new tenants for February and the unit remained empty in March. However, she also stated that she had subsequently listed the unit for sale as a result of the unpleasant experience with the tenancy. Therefore, I find that the landlord is entitled to the rent for January and loss of rent for February. I find that the rental unit was not available for rental in March and decline to award loss of rent for that month. Accordingly, I find the landlord is entitled to \$1,600 for each of January and February.

**Supreme Court filing fee for Writ of Possession and Affidavit.** The landlord claims an \$80 filing fee to obtain a Writ of Possession and \$31 to file the Affidavit. I find that these are costs of litigation over which I have no jurisdiction and must decline an award.

**Accurate Court Bailiff Fees.** As the tenants showed no signs of honoring the Order of Possession issued on December 12, 2008, the landlord was forced to retain court bailiffs. She initially had to deposit \$2,000, but \$1,000 was refunded when eviction by the bailiffs became unnecessary on January 30, 2009. Therefore, I find that the landlord is entitled to recover that \$1,000.

**Filing fee.** The landlord is entitled to recover the \$100 filing fee from the tenants for this proceeding.

**Security deposit.** As the landlord made application to retain the security deposit in accordance with section 38(1) of the Act, I find that the landlord is entitled to retain the security deposit in set off against the balance owed.

In total, I find that the landlord is entitled to a Monetary Order calculated as follows:

January 2009 rent	\$1,600.00
February 2009 loss of rent	1,600.00
Court Bailiff fees	1,000.00
Filing fee	<u>100.00</u>
Sub total	\$4,300.00
Less retained security deposit	- 800.00
Less interest	- <u>6.03</u>
<b>TOTAL</b>	<b>\$3,493.97</b>

Thus, the landlord is authorized to retain the security deposit and interest in set off and, in addition, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for the balance of \$3,493.97 for service on the tenants.

April 2, 2009.

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Dispute Resolution Officer