



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent and utilities, for loss of rental income and to recover expenses related to cleaning and re-renting the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of the Tenant's security deposit.

### Issues(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This month to month tenancy started on November 15, 2008 and ended on or about February 6, 2009 when the Tenant moved out. Rent was \$1,700.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$850.00 on November 3, 2008.

The Landlord said the Tenant's rent cheque for February, 2009 was returned for non-sufficient funds. The Landlord claimed that shortly thereafter he discovered the Tenant had moved out without any notice to him. The Landlord also claimed that the Tenant has only paid \$60.00 and that the balance of February rent is still in arrears. The Landlord said he was unable to re-rent the unit again until March 15, 2009. Consequently, the Landlord sought a loss of rental income for one-half of March as well as his advertising expenses. The Landlord said that he would have only advertised in one newspaper had the Tenant given him proper notice.

The Landlord said the Tenant left the rental unit in a mess and that he spent 12 hours on February 7, 2009 removing garbage and cleaning and he sought to be reimbursed \$180.00 for his time. The Landlord claimed that he also hired someone to do further cleaning on February 8, 2009 at a cost to him of \$120.00. The Landlord argued that he was entitled to these amounts because the Tenant had abandoned the rental unit on February 6, 2009 and he needed to re-rent it as soon as possible. In particular, the Landlord claimed that on February 6, 2009 he found the rental unit unlocked with the patio door open and the Tenant's belongings removed (except for a cat). The Landlord

also said the Tenant failed to return any messages he left that day and did not give him a forwarding address.

The Landlord also claimed that the Tenant has arrears of utilities of \$88.72 pursuant to a Cut off Notice dated February 27, 2009. The Landlord said he did not know what period the outstanding amount was for but claimed that he confirmed with the City of Kelowna that the amount did not include an amount requested as a deposit. The Landlord also sought an additional amount for the subsequent billing period to March 15, 2009 (when new Tenants moved in) in an estimated amount of \$50.00. The Tenant admitted that he had paid only \$60.00 of the rent for February, 2009 and that the utility account was in arrears.

The Tenant also admitted that he did not give the Landlord notice that he was moving out. The Tenant said however, that the Landlord knew where he was because he followed the Tenant to his new residence on February 5, 2009 and spoke to his new Landlord. The Tenant claimed that he cleaned out the rental unit at the end of the tenancy (except for about 2 or 3 garbage bags) and all garbage bags were put outside by the garage. The Tenant said the Landlord asked him to remove the garbage bags which he did on February 7, 2009. The Tenant said when he arrived at the rental unit at noon on the 7<sup>th</sup>, the other 2 or 3 garbage bags were outside and the rental unit was completely cleaned out. Consequently, the Tenant disputed that the Landlord spent 12 hours cleaning out the rental unit on February 7, 2009. The Tenant also argued that the rental unit was not reasonably clean at the beginning of the tenancy but that in any event, additional cleaning was not necessary at the end of the tenancy.

## Analysis

I find that there are arrears of rent for February, 2009 in the amount of **\$1,640.00**. Section 45 of the Act says that a Tenant of a periodic tenancy must give a Landlord one clear months notice in writing that he is ending the tenancy. If the Tenant fails to do so, the Landlord may be entitled to recover a loss of rental income up to the earliest date that a Tenant's notice would have taken effect had one been given. In this case, I find that the Tenant moved out on February 6, 2009 and that the earliest date that a notice could have taken effect would have been March 31, 2009. However, the Landlord was able to re-rent the rental unit for March 15, 2009 and as a result, I find that the Landlord is entitled to a loss of rental income for the period March 1-14, 2009 in the amount of **\$767.74**. I also find that there are arrears of utilities owing in the amount of **\$88.72**. In the absence of any evidence as to what further amount may be owing for utilities, the Landlord's application for a further \$50.00 for utilities is dismissed.

The Landlord admitted that he would have advertised in one newspaper publication even if the Tenant had given him proper notice. The Landlord claimed he had to

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advertise in two publications, however, in order to rent the rental unit quickly. The Tenant did not object to compensating the Landlord for one of these expenses. Consequently, I find the Landlord is entitled to recover advertising expenses for one publication and I award him the amount of **\$60.09**.

The Landlord did not do a move in or a move out condition inspection report. The Landlord said he could not do a move out condition inspection report because the Tenant had abandoned the rental unit. Section 35 of the Act says the Landlord may complete a condition inspection report without a Tenant if the Tenant has abandoned the rental unit. Consequently, the Landlord must still do a condition inspection report even if the Tenant doesn't participate. The Landlord did not do a condition inspection report and did not provide any corroborating evidence as to the condition of the rental unit at the end of the tenancy.

The Tenant disputed the Landlord's evidence and claimed that the unit was reasonably clean at the end of the tenancy. In this case, the Landlord has the onus to prove on a balance of probabilities that the rental unit required cleaning and that his expenses were reasonably incurred. In the absence of any corroborating evidence (such as a condition inspection report or photographs), I find that there is insufficient evidence to support the Landlord's claim for cleaning expenses.

Furthermore, s. 7(2) of the Act says that a Party who suffers damages must do whatever is reasonable to minimize his losses. This means that a landlord must give a Tenant a reasonable opportunity to do any cleaning if it is necessary. To that end, I note that although the Tenant was present at the rental unit by noon on February 7, 2009, there was no evidence that the Landlord asked him to do a move out condition inspection report or to do any remedial cleaning if it was necessary. Consequently, the Landlord's claims for cleaning expenses are dismissed.

I find that the Landlord is entitled to recover his \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

February 2009 rent:	\$1,700.00
Loss of rent March 2009:	\$767.74
Unpaid Utilities:	\$88.72
Advertising expenses:	\$60.09
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,666.55



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Less: Security deposit:	(\$850.00)
Tenant payment:	(\$60.00)
Accrued interest:	<u>(\$2.07)</u>
Balance owing:	\$1,754.48

## Conclusion

A monetary order in the amount of **\$1,754.48** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 23, 2009.

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Dispute Resolution Officer